

ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

1

*Wednesday, 7th March, 1956
and Thursday, 8th March, 1956*

WITNESSES

Ministry of Agriculture, Fisheries and Food



LONDON

HER MAJESTY'S STATIONERY OFFICE

1956

THREE SHILLINGS NET

List of Witnesses

WEDNESDAY, 7th MARCH, 1956

*SIR ALAN HITCHMAN, K.C.B.

Permanent Secretary

MR. A. R. MANKTELOW, C.B.

Deputy Secretary

MR. B. C. ENGHOLM

Under Secretary

†MR. J. A. K. CHRISTIE

Assistant Secretary

†MR. N. H. BREWIS

Assistant Solicitor

†MR. L. D. G. RICHINGS

Principal

on behalf of the Ministry of Agriculture, Fisheries and Food

THURSDAY, 8th MARCH, 1956

MR. B. C. ENGHOLM

Under Secretary

MR. J. A. K. CHRISTIE

Assistant Secretary

MR. N. H. BREWIS

Assistant Solicitor

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Principal

on behalf of the Ministry of Agriculture, Fisheries and Food

* Morning Session only.

† Afternoon Session only.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

Wednesday, 7th March, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

First Memorandum of Evidence Submitted by The Ministry of Agriculture, Fisheries and Food

Part I

GENERAL INTRODUCTION

1. This part of the memorandum contains a short account of some of the history relevant to the development of commons and the law of common land and a general description of the nature of rights of common. It does not attempt more than a general introduction. There is disagreement among historians on the origins of common rights and the historical section may to that extent be open to criticism, though an attempt has been made to limit what is said to what is generally accepted. Similarly, the section on the nature of common rights is intended only as a sketch.

History

2. In early times, the majority of the inhabitants of England and Wales lived in self-supporting agricultural village communities (vills). Part of the land only was in arable cultivation (the common fields) and, with the exception of land temporarily fenced whilst under hay (meadows) and of a few small inclosures near houses for gardens, orchards, paddocks, etc., it was open land.

3. The common fields originally consisted of large tracts of land given over mainly to a system of arable farming by the community in common. They were most frequently found in the lower lying parts of the country; in the remoter and hillier parts, settlement was more sparse and the farming predominantly pastoral. The land nearest to the vill was ploughed first and each family was responsible for the cultivation of a strip in each successive ploughing area. In the course of time, as the social system developed, it seems that each family was allocated strips annually. These eventually became holdings and the common field was farmed 'in severalty', i.e. in separate strips held by individual families. Of the land near the vill, only the better land was used for cultivation and for

use as meadow; the poorer land being left in its natural state to provide feed for the cattle in summer and certain other produce such as wood and turf for fuel.

4. When the common fields were fallow, either for the whole year or seasonally after cropping, or when the hay had been cut in the meadow, the 'commonable animals', i.e. the horses and oxen that pulled the plough and the cattle and sheep that manured the land, were allowed to graze them. When the fields were in use and the meadow was under hay the need for pasture was met by turning the animals on to 'waste land' which was left uncultivated. This waste land was an integral part of the farming economy.

5. As the population grew, more land was taken into cultivation and, in due course, all the cultivated land and also a great deal of pasture was inclosed. Certain pieces of land, however, remained neither inclosed nor cultivated and these, in the main, are the commons of today of which there are extensive areas in the South West, in the North and in Wales, where pastoral farming was more usual.

6. From the time of legal memory, i.e. the reign of Richard I, most of the country was divided into 'manors'. Where there was a manor its lord was *in effect* the owner of the soil but the inhabitants of the vill had the substantial use and enjoyment of much of it. Not all land, however, was covered by the manorial system; in some instances boroughs had possession of their surrounding land and the burgesses and townsfolk enjoyed the user.

7. Sometimes the consent of the lord of the manor would be sought to the putting down to permanent pasture of a part of the common field that normally was arable. If consent was granted, the land was usually fenced and regulations made providing for 'stints', that is, giving each person interested in the common field an entitlement to put a stated number of animals of a particular type into the pasture. Although the land was fenced, in order to keep the animals from roaming in the nearby crops, it was nevertheless land over which common rights remained. Some of these pastures probably exist today.

8. It has been held that the lord should not be 'stinted' in respect of the waste land of the manor (if and when there were local stints of this nature) but should be 'stinted' in respect of the common pastures, where he shared the rights of user with the remainder of the community.

9. So far as grazing was concerned, the number of animals permitted to graze was generally controlled by the doctrine of levancy and couchancy (see later under Common Rights, paragraph 26). Broadly speaking, this came to mean that a commoner could put on to the waste land as many animals as his holding was capable of supporting through the winter.

10. One of the earliest assertions of this difference of status between the waste and the field is to be found in the Statute of Merton, 1235 (now known as the Commons Act, 1236). This laid down that the lord could inclose and appropriate portions of the waste land of his manor and so exclude tenants of the manor who had rights of pasture appendant (see paragraph 22) provided that sufficient pasture for their stock, with convenient access, was left to them. The Second Statute of Westminster, 1285 (now known as the Commons Act, 1285) extended this principle to enable the lord to exclude persons, not tenants of the manor, having rights of common appurtenant (see paragraph 23). Neither of these statutes however permitted the inclosure of wastes where the rights were other than that of pasture, e.g. the cutting of the turf. Nevertheless, in some counties, it is believed that lords farmed their wastes side by side with the open field system, as a matter of established custom.

11. In different parts of the country the systems prevailing at various points in time continue to the present day. There are, for example, commonable lands which are held and cultivated in severalty during part of the year but which become commonable after the crop has been removed and, in many cases, during the whole of the year in which the lands lie fallow. The most important of these are 'lammas' or 'half-year' lands. They are open arable and meadow lands becoming commonable not only to the parties having the severalty rights but also

to other classes of commoners. Shack land, another type of commonable land, is similar to lammas, a difference being that after the crop has been removed the land is commonable only to the parties having severalty rights. Another example is the 'gated' or 'stinted' pastures which exist mostly in the north of England; these are grazed by a limited number of holders of rights known by different names such as 'cattlegate', 'beastgate' and 'pasturegate'. The ownership of the soil of land subject to cattlegates, though usually vested in the lord of the manor—at any rate in the north of England—is by no means always so. Some of the existing fenced common pastures will undoubtedly have been due to members of the manor having inclosed part of the common field; others will have resulted from the need in outlying districts (in the North and West particularly) to fence in order to control animals and protect them in the event of enemy raids. It is probably misleading to generalise too much; the historical background of each piece of land with common rights attached should be separately investigated if its nature is to be understood.

12. In the 16th Century an extensive inclosure movement took place, as a result of which much open arable land and to a lesser extent the manorial wastes were fenced and converted into private pasture for sheep farming. In the last half of the 18th and the first half of the 19th Centuries there was a further movement to get rid of the remainder of the common fields and the manorial wastes. The motive behind these movements was agricultural improvement, as it was perceived that a much greater yield was possible from inclosed land (which could be improved by applying the new agricultural knowledge and controlling the grazing) than from the open land. The open land was often over-stocked, especially where there were no clear rules or stints defining the number of animals which a commoner was entitled to put out. Sometimes, perhaps often, a strong or rich man with common rights would put out many cattle to the detriment of his weaker or poorer neighbours. Further, as the common was the property of no one in particular so far as its profits were concerned, no improvements were made; and the activities of commoners who had the right to cut turf or peat for their own use as fuel (but who in fact usually cut it for sale) were detrimental to farming.

13. Most of the 18th Century and early 19th Century inclosures took place by way of private Acts of Parliament. There are about four thousand of these. The process was difficult. For example, the consent of a large majority, four-fifths in value, of the persons having common rights, of the lord and of the person entitled to the tithes was necessary to induce Parliament to sanction the inclosure. Any of these could defeat the measure and their interests were often antagonistic. Persons with rights in the uninclosed land had to receive proportionate amounts of the inclosed land. In the 1770s a dearth of corn amongst other things forced Parliament to consider the conditions of the uninclosed lands and in 1801 the first general Act of Inclosure (the Inclosure (Consolidation) Act) was passed. The Act was entitled 'an Act for consolidating in one Act certain provisions usually inserted in an Act of Inclosure and for facilitating the mode of proving the several facts usually required in the passing of such Acts', and in effect provided model clauses and a standardized procedure for future private Acts. The machinery and the expense of an application to Parliament for a private Act remained and it was still a Parliamentary Select Committee who examined the facts; but the private Acts became much shorter and less expensive owing to the number of standard provisions enacted once and for all in the general Statute. This was followed by the Inclosure Act of 1836 (the first containing general powers of inclosure) and another in 1840. All three have since been repealed. They gave some encouragement to inclosure but were evidently regarded as disappointing and in 1845, the General Inclosure Act was passed with the object of enabling inclosure to become cheaper and easier, though it may be noted that it is the first measure to have regard to the interests of towns in open spaces.

14. This Act embodied many provisions of the existing legislation. The chief changes were (i) that Inclosure Commissioners were appointed to deal with the applications and take over many of the duties of the Parliamentary Select Committee in enquiring into the facts and making recommendations and (ii) that the

interests of towns should be considered as well as the interests of those connected with the land. Under the procedure laid down by the Act, the Commissioners were to enquire into the facts and, if satisfied that the particular inclosure was expedient, to draw up a scheme. All the schemes for one year were then to be submitted to Parliament in one general Bill. Generally speaking no scheme could be carried out until the Act was passed.

15. Land that might be inclosed was divided into two classes (i) that which might be inclosed without the intervention of Parliament, which included lands held in severalty where no rights of common existed, and (ii) lands that could not be inclosed by the Commissioners without the sanction of Parliament, including all lands over which rights of common existed, all gated and stinted pastures, pastures without stint, waste land over which there were rights of common and all wastes within fifteen miles of London or within distances from other large towns varying according to the number of inhabitants. A third class, town greens and village greens, was also specified and could not be inclosed; finally, lands in the New Forest and the Forest of Dean were specifically excluded from the Act. It might be said in passing that the New Forest is the subject of specific Acts, the New Forest Acts and the New Forest and the Forest of Dean are now controlled by the Forestry Commission. The 1845 Act was succeeded by a number of amending Acts, the last of which was in 1899. Further details of these are given in Appendix I.

16. The growth of London and other large towns at this time raised the value of land for building and there was a great deal of apprehension about the effect of the consequential inclosures. In 1865 a private society was formed, the Commons, Open Spaces and Footpaths Preservation Society, whose object was to prevent the inclosure of and encroachment on commons and open spaces. The general interest of the public in common land and the importance to the community of preserving commons as open spaces near towns, especially the great towns, became increasingly felt. It was argued that if a lord of the manor and his commoners agreed on terms to inclose a common near a large town, especially London, the inhabitants suffered. Thus there was conflict between the interests of the general public and of the individuals with legal rights in and over the land. This conflict found expression in Parliament and resulted in 1866, in the passing of the Metropolitan Commons Act. This Act applied to all commons within the area of the Metropolitan Police District at that time and provided that they could not be inclosed by proceedings before the Inclosure Commissioners. The Commissioners might only, on receipt of an application, draw up a scheme to establish a local management with a view to spending money on drainage and improvement, the making of byelaws for the prevention of nuisances and so on. Each scheme was to be the subject of a local inquiry and submitted to Parliament for approval. The detailed provisions and procedures of this Act, which is still extant, are given in Appendix I.

17. Public discussion continued and in 1876, an Act (the Commons Act) was passed designed to hinder inclosure in severalty and to substitute instead regulation for improvement, stinting and so on. The Inclosure Commissioners were enabled, with the consent of Parliament given by way of a specific Act, to authorise the inclosure in severalty of a common on such terms and conditions as were thought proper for the protection of public interests. The Act, in its preamble, instructed the Commissioners to have regard to 'the benefit of the neighbourhood' as well as to the 'private interests' involved. The 'benefit of the neighbourhood' was defined in terms already appearing in the 1845 Act, although that Act was one to facilitate inclosure, and was to include the consideration of 'the health, comfort and convenience of the inhabitants of any . . . populous places in or near any parish in which the land proposed to be inclosed may be situate'. The same criteria applied to the making of regulation schemes despite the Act's purpose of encouraging regulation at the expense of inclosure. The Act substantially governs the present day situation and a detailed description is given in Appendix I. The Minister of Agriculture, Fisheries and Food now exercises the duties of the defunct Inclosure Commissioners.

18. Since 1876, there have been a number of Acts relating to commons in general. In 1893 an amending Act was passed preventing a lord of the manor from inclosing part of the manorial waste without the consent of the Board of Agriculture who had taken over the functions of the Inclosure Commissioners. This was designed to restrict his right to inclose a waste under the Statutes of Merton and Westminster II—a loophole in the earlier legislation. In 1899, an Act was passed mainly to enable local authorities of urban and rural districts to regulate commons lying within their boundaries. In 1908, a further Act was passed to enable the Board of Agriculture to make regulations governing the turning out of entire, that is uncastrated, animals on common land. There was, however, no significant change in the general procedures for inclosure until the Law of Property Act, 1925. This is the last of what may be described as the enactments affecting commons in general although commons are mentioned in a number of modern Acts, for example, the Acquisition of Land (Authorisation Procedure) Act, and the Hill Farming Act, 1946. These two lay down a special procedure for land subject to common rights when the Acts are being applied to such land. A further description of all the above Acts will be found in Appendix I but it may nevertheless be of use at this point to say something about the relevant Sections of the Law of Property Act, 1925, which are nowadays of major importance.

19. Two Sections are involved, 193 and 194. Broadly speaking, Section 193 describes three types of common, metropolitan, urban and rural. The public are given statutory rights of access to metropolitan and urban commons and a procedure is laid down in respect of rural commons whereby the owner of the soil can make a Deed granting the public rights of access. Section 194 simplifies in certain cases the lengthy inclosure procedure. It says that no one may erect fences or buildings or construct any work which impedes access to land subject to common rights on 1st January, 1926 (when the Act commenced) without the consent of the Minister of Agriculture. In considering whether or not to give his consent the Minister has to have regard to the criteria laid down in the 1876 Act and to hold, if necessary, the inquiries prescribed by that Act. As interpreted by the Ministry, this has the effect of preventing fences and buildings being erected and works constructed on common land if the proposal cannot be shown to have some positive benefit for the inhabitants of towns and villages nearby as distinct from commoners, farmers, and other private individuals, and this test considerably restricts the number of successful applications.

Nature of Rights of Common

20. A right of common has been defined as a right which one or more persons may have to take or use some portion of that which another man's soil naturally produces. This right is vested in certain individuals, either as the occupiers of particular farms, to put it in a modern context, or otherwise, and no one else can exercise it. It is widely held that common land is public land. This is a fallacy. All common land is owned by some individual or other legal person, the only difference between this and the more usual type of land ownership being the right of others, in common, to take the produce of the soil and, in certain limited cases under modern legislation, the right of the public to have access to the land.

21. Common rights can be distinguished in two main ways: by reference to the legal status, i.e. rights appendant, appurtenant, in gross and *pur cause de vicinage*, or by reference to the actual user, i.e. pasture, turbary, estovers, piscary and the taking of gravel and minerals. Generally speaking, mineral and shooting rights belong to the owner of the soil and in medieval times were vested, together with the ownership of the soil of the common, in the lord of the manor or in the freemen of a borough. The ownership of the soil can be divested from the manor or borough and sold and it is the owner of the soil who, together with the commoners, has legal interest in the common. It is worth noting here that the term 'common' when standing alone is nowadays often used to mean the land and refers, usually, to the waste of the manor. In the past, the word meant a right of common; and in local parlance it sometimes still does. Normally, however, when common rights are meant, either the expression

'common rights' or another descriptive phrase such as 'right of pasture' is used. The term 'commonable land' usually means common fields, e.g. stinted pasture of common field origin, lammas land, etc.

Classification by Legal Status

22. The 'right of common appendant' is the right of every freehold tenant of the manor to put out to pasture on the waste the commonable cattle, levant and couchant, on his tenement. The terms 'commonable cattle' and 'levant and couchant' are defined in paragraph 26. The right of common appendant cannot be created today, but some ancient rights of common appendant are believed to be still in existence.

23. The 'right of common appurtenant' is a right depending upon a grant or prescription annexing to particular lands, not necessarily of the manor, a right of user of a particular waste. This is a right which can still be granted today by the owner of the soil.

24. The 'right of common in gross' depends upon a grant or prescription entitling the possessor without reference to any particular land to some user of a certain waste. It may be noted that this right may cause difficulty to an owner of the soil if he is attempting to extinguish the rights of common over a piece of land. The owners of rights appendant and appurtenant can be fairly easily identified by reference to the occupation of particular land, but it may be difficult to know who are the present owners of rights in gross. It may be possible, however, to show that the rights have been abandoned i.e., if, in the absence of explanation, they have not been used over a period of twenty years or more.

25. The right 'pur cause de vicinage' (Norman French: by reason of neighbourhood) is a right of the commoners of a particular common to allow their cattle to stray over certain adjoining commons. It can be presumed that this developed out of necessity, as it was impossible to prevent uninclosed cattle from straying on to adjoining land.

Classification by actual user

26. 'Common of pasture', the most generally used right, is the right of feeding cattle, horses and sheep on another person's land. It can exist as a right appendant, appurtenant, in gross or pur cause de vicinage. If it is a right appendant it is governed by the doctrine of 'levancy and couchancy'. The original meaning of this doctrine was that the number of animals which could be turned out was limited to the number required for the tillage of the particular holding. The courts eventually adopted a rule more certain in its application, namely, that this right enabled the holder to turn out upon the common as many 'commonable animals' as the land to which the right appendant attached could maintain by its produce through the winter. 'Commonable animals' in this context means only horses and oxen used for ploughing, and sheep and cattle used for manuring the land. Common of pasture appurtenant is subject to the specified number of head of stock laid down in the grant, or, in the absence of any such specification, to the limitation of the doctrine of levancy and couchancy. Common appurtenant is not confined to horses, cattle and sheep but, according to the grant, may be for hogs, goats, geese and any other animal that can be sustained on the common. In the absence of an express grant, evidence of use will establish a prescription. Where the right specifies the number, the commoner may assign his right in whole or in part by licensing a stranger to put stock on the land. A right appurtenant for a particular number (a 'number certain') may be severed from the land; it then becomes a right of common in gross and it is in this form that rights in gross are usually found. Hence a right in gross will usually specify the number and type of animal. The right of pasture pur cause de vicinage is subject to the limitation that the commoners of neither common shall turn on to their own common more beasts than it will feed.

27. There are other rights of pasture which, though not strictly rights of common, are of a similar nature. These may be classified, according to the

nature and extent of the products taken, as (i) a 'right of sole vesture' and (ii) a 'right of sole pasture'. Each right may be enjoyed either during a whole year or for a limited period and during this time the owner of the soil is excluded. Vesture extends to the taking of corn, grass, underwood, sweepage (all that comes to the sweep of the scythe) and the like; pasture is not so wide, being the right to take by the mouths of cattle everything growing on the land. The owners of this right of pasture are under no restrictions as to the cattle they turn out and the doctrine of levancy and couchancy does not apply; the right may be let or agisted. It is frequently vested in corporations for the benefit of the inhabitants of a town. There are also two other rights, foldage and foldcourse, which originally were not rights of common but, like sole pasture, have been confused with them and with each other. Foldage is the lord's right to have the tenants' sheep folded on his land at night for manuring. Foldcourse is a right of feeding sheep on another's land and is regarded as a common appurtenant.

28. 'Common of piscary' is a right of fishing in water belonging to someone else. It may be either appurtenant or in gross. It does not apply to the navigable part of a tidal river or the sea and is exercised in ponds, lakes and the upper reaches of rivers. Where the right is appurtenant to a house, the fish should not be taken for sale but only for consumption in the house.

29. 'Common of turbary' is the right of digging turf from another man's ground for use as fuel in the commoner's house. It is usually granted as a right appurtenant to a house; it may also exist in gross where it is for a specific quantity. A mayor and burgesses may have such a right for themselves and the inhabitants of the town.

30. 'Common of estovers' is a right to cut or prune from a forest or waste land wood for the commoner's buildings or fires. It may also be used for fencing and the repair of farm implements. It can be appurtenant or, where the quantity is specified, in gross. It resembles common of turbary.

31. 'Common in the soil' is the right of digging for sand, stone, coal and minerals and has been recognised as a right of common from early times. It is similar in nature to the commons of estovers and turbary. It may be appurtenant or held in gross. It was, often used for the purpose of repairing the commoner's house or for use on his land.

Part II

COMMONS TODAY: A GENERAL DESCRIPTION

32. It is not known exactly how much land in England and Wales is today subject to rights of common. The figure usually quoted officially is two million acres, of which it is thought some half-a-million lie in Wales. This figure includes common fields, which for part of the year are under arable crops, and common field pastures, both of which are in a different category from manorial wastes; but the acreage is probably a small part of the total. The estimate is based on extracts made in 1874 from the tithe returns of that time and is not the result of a detailed survey of commons and commonable lands.

Classification and use

33. Commons can be classified from the agricultural point of view into three main classes, namely, *urban or amenity common*, i.e. small commons near towns and villages which are used primarily for public enjoyment, and are in a number of cases regulated by district councils, but which are sometimes grazed; *upland common*, i.e. the extensive hill and moorland areas in Wales and the border country, South West England and North England, providing grazing for livestock and also open spaces for public enjoyment; and *lowland common*, i.e.

pieces of common land, usually relatively small in acreage, some of which contribute to agricultural production while others are derelict and may or may not be used as open spaces for recreational purposes.

34. The extent to which commons are used is not known but it is believed that about one-and-a-half million acres are used to a greater or lesser degree for agriculture, largely as rough grazing. The value of the grazing to holdings with common rights attached varies greatly but in some cases the economy of a farm depends upon its effective use.

35. Grazing is by far the most important common right, but other common rights, e.g. turbary, minerals and estovers, are also used to some extent. An important use of commons is for public recreation, both for sports and games like cricket and football and for less formal activities such as rambling. The armed forces (principally the army) also use open land which may be common for training purposes. These uses are not necessarily mutually exclusive.

36. During the war some twenty-one thousand acres of the common land thought most suitable for arable production were requisitioned and farmed by the War Agricultural Executive Committees, or let by them on licence to farmers. Much of this land was found to be reasonably productive. Other commons were requisitioned for such purposes as the construction of airfields. Of the area requisitioned for agriculture, about fourteen-and-a-half thousand acres have been resown to grass and released from requisition; nearly three thousand acres are in course of purchase under Section 85 of the Agriculture Act, 1947, and will by this means be kept in agricultural production; while three-and-a-half thousand acres are being retained for the time being and it is at present proposed that they should be released from requisition in 1956 and 1957.

37. In all cases where the commoners are identifiable with sufficient certainty, attempts are being made for them to be associated with the management of regrassed commons during this last period of requisition. Wherever possible, the commoners are being encouraged to elect small Committees to manage their affairs in the hope that these Committees will continue in existence as agencies to manage the grassland and so preserve the improvements which have been made to it. But the success of these efforts is precarious because it depends on the co-operation of all the commoners. Once the common has been derequisitioned and the fences removed, it will not be legally possible to prevent a commoner, who does not subscribe to the scheme of management, from insisting on exercising his full common rights even if this means that the common is over-grazed. Indeed, though legally possible, it will in practice be very difficult to prevent an unco-operative commoner from going further and putting out all his animals to subsist on the common, or to stop the invasion of the common by animals owned by non-commoners. Further, and most important, once the land is free from requisition, the erection of fences, which is often a pre-requisite of good grassland management, becomes a matter of great legal difficulty owing to the effect of Section 194 of the Law of Property Act, 1925. As explained more fully in Appendix I, under this Section the erection of fences on common land requires the consent of the Minister of Agriculture and this consent is in turn dependent on the condition, which in practice can rarely be fulfilled, that the fences are, in a special sense, for the benefit of the neighbourhood.

38. Control of grazing without fences can only take place if each commoner agrees to limit the number of stock he puts on to the common and to conform to rules prohibiting grazing on certain days so as to enable the pasture to recover. In the past, the use of a common would have been effectively controlled by a manorial court and the manorial officers as well as by local opinion. But today, in most cases, manorial courts as a practical force have disappeared and with the general weakening of ties in rural communities, local opinion has lost much of its effectiveness. Maintaining improvement and controlling grazing under these conditions is difficult, if not impossible. Further, where land is unfenced and crossed by motor roads, farmers are loath to risk their stock, and for this reason there may be deterioration of the grassland through understocking.

39. The difficulties in the way of preventing overstocking do not exist in stinted commons, or in some regulated commons, but the legal difficulty of fencing applies to commons generally. Even the ploughing up of common land

in order to reseed to improve the pasture may be illegal unless specifically authorised by a statutory scheme.

40. What has been said above probably applies only to manorial wastes and would not be true of commonable lands, i.e. the common fields and the common field pastures, most of which, if not all, are fenced. The common fields—lammas land, half-year land and so on—are cultivated in severalty during part of the year and grazed in common for the remainder of the year.

41. Apart from the requisitioned land, the Ministry has no detailed evidence of the agricultural or other value of common land, although information about certain areas could probably be obtained by searching the records of the County Agricultural Executive Committees.

42. District Councils can acquire authority (under the Commons Act, 1899) to regulate a common (if there is no local Act whose main purpose is to ensure that the land shall remain uninclosed⁽¹⁾) and can control not only nuisances but also unlawful grazing; they can also make improvements. These powers are used for the improvement of amenities. The Ministry's view is that improvement in this context has not the usual agricultural meaning of increasing the productivity of the land but means adding to the attraction of the common as a place for recreation.

43. Where land has reverted to scrub, the expense of reclaiming it would probably militate against its amenity use as well as its agricultural or other use. As has already been indicated in some cases it may be that the land has reverted to scrub because of the advent of the motor car. In the days of horse-drawn vehicles, the absence of fences did not endanger wandering cattle or travellers; with the arrival of cars speeding along motor roads it certainly did and has contributed to the withdrawal of animals from the common. The lack of regular grazing would result in land reverting and could even make it unsuitable as a place of recreation for the town dweller with his car.

Distribution of commons

44. The Ministry lacks the information on which to base a systematic description of the existing use of commons in England and Wales, but the following remarks may be of interest. They are based on the observations of some of the Ministry's officers during the course of their ordinary day-to-day work, and are believed to be accurate so far as they go, but it is not claimed that they provide a comprehensive description.

45. In the South East of England there are two large areas of common land, Ashdown Forest and the New Forest; the latter is controlled by special Acts of Parliament administered by the Forestry Commission. There are also a few important commons such as Cockmarsh (400 acres) in Berkshire, Ditchling (300 acres) in East Sussex and Dorney (170 acres) in Buckinghamshire where common grazing is reasonably efficiently controlled. It is difficult to say to what extent common rights are used elsewhere in this area. In some cases an attempt is being made to maintain the condition of the grass by regulated grazing and occasionally there are efforts to keep up improvements on commons reseeded under requisition; where this is not done, the land tends to revert to scrub. There are also examples of the non-agricultural use of commons ranging from golf courses and raccourses to village football and cricket pitches. The military authorities use common land for training in this part of England.

46. In Eastern England many commons, particularly on the sandy, sour land along the East coast near the small holiday resorts, are extensively used for recreational purposes; as also are Epping Forest and the Cambridge commons. A considerable number of commons are grazed and range from reasonably managed pasture to the roughest of rough pasture. Usually they are understocked. With the continued expansion of the attested herds scheme, common rights are of less and less value unless the whole area becomes attested. This is, at least in principle, true for the whole country, for, indeed, any epizootic disease is

⁽¹⁾ It is the Ministry's view that where there is a Local Inclosure Act in respect of a former common containing a Section saying that part of the land shall remain uninclosed, it is not a bar to a regulation scheme.

difficult to control under the conditions of grazing found on common land. Some of the area of sandy heath in Norfolk and Suffolk, covered with bracken and heather, is capable under modern management of growing useful crops like barley, lucerne and sugar beet. Pine afforestation is also possible. In general, however, the proportion of the existing commons in this part of England with soil of even average farming value is relatively small.

47. In the East Midlands the majority of commons with any agricultural interest lie in Lincolnshire (Lindsey) and Nottinghamshire with some small areas in Lincolnshire (Kesteven), Leicester and Rutland. The principal right exercised seems to be that of grazing but it is probable that rights of turbary and estovers also exist. On the ordnance survey maps for this area there are various pieces of rough land marked as commons but individual enquiry would be necessary to determine whether the name is merely a relic or whether they are really common. This is true elsewhere in the country.

48. In Yorkshire and Lancashire there are large areas of rough grazing over which common rights are exercised. Some of these are manorial wastes and others are probably inclosed pastures owned in severalty. Most of the pastures are stinted. A possible explanation for the existence of the inclosed pastures is given in paragraphs 7 and 11 of Part I. The conditions in the North country in early times were unlike those in the South, and are reflected in the somewhat different development of commons and common rights. As regards the general value of some of the rights it is said that sheep gates are sometimes auctioned in the Pennines for as much as six or seven shillings per sheep. The potential value of common land in Yorkshire and Lancashire, as elsewhere, varies with the geological formation, the soil aspect, elevation and so on. There has been a great deal of urban and industrial development in these areas in the past and thus much of the common land that is left is hill pasture; but by no means all.

49. In the far north of England there is a large acreage of common land and the right to cut bracken as well as the right of grazing is of some value. Many commons are stinted. The stinted commons are often understocked whereas the unstinted commons tend to be overstocked where the grazing is good. In Northumberland there is an area of some twenty-three thousand acres known as the Allendale and Hexhamshire Stinted Pastures. These are the subject of an application for inclosure under the Commons Act, 1876, i.e., inclosure in severalty. This is noteworthy as it is the only effort at inclosure under this Act that has been made for some years. Durham has also extensive areas of common land on the spurs and foothills of the Pennines, all of which could be improved.

50. In the West Midlands, the use of the main common right, i.e., grazing, varies a great deal. In the agricultural areas they are generally used and greatly valued. In and near the towns grazing is little used owing to the extensive recreational use of the land by the public. This again is typical of the general situation throughout the country as a whole. It has been suggested to the Ministry that of the total area of commons in this locality, about one-tenth is in reasonably good agricultural condition; that about one-third is capable of improvement for agricultural purposes; that about one-fifth may be intrinsically suitable for forestry or urban development and that the remainder is probably so poor and so remote that it is best left in its natural state for open space purposes. The Ministry is not, however, able to offer a considered view of this estimate.

51. In Wales, the main type of right exercised is sheep grazing but cattle and horses are also turned out. The sheep grazing rights are valued and used. It is thought that there are some half-a-million acres of common land in Wales and it has been suggested that some seventy-five per cent. of this may be physically suitable for afforestation.

52. In South West England there is the Forest of Dean, an old Royal Forest now controlled by the Forestry Commission, where mining and grazing rights are valued. In the case of many of the considerable number of commons in this part of the country, the grazing rights are fully used and are important

additions to the resources of small farms. Parts of Bodmin Moor, which consists in the main of a number of commons mixed with non-common open land, provide a particularly interesting example of rough grazings that are under requisition and have been improved with the consent and co-operation of the commoners. As elsewhere in the country there is a large number of village greens, golf courses, urban commons and derelict land.

53. In one of the Ministry's provinces, the South East, the relation of geological formation to the distribution of common land has been roughly observed. The commons are widely distributed over the different geological formations but there are concentrations worthy of note, for example, on the lower Greensand series which start in eastern Hampshire and run through West Sussex, north and parallel to the South Downs. The bulk of the West Sussex commons lie here. In south west Surrey there are several thousand acres on the Folkestone Beds. Many commons, small and scattered, are on the Weald Clay running from West Sussex into Surrey and Kent, and many on the Braeklesham, Barton and Bagshot Beds—there is one concentration, including the New Forest, in south west Hampshire and another in north west Surrey. There is a number of commons in north west Kent, north east Surrey and south Buckinghamshire on the various Terrace Gravels of the Thames and in Oxfordshire, Buckinghamshire and Berkshire there are concentrations on the various formations which cap the Chalk; another group, including Ashdown Forest, lies on the High Weald of East Sussex. A general overall description of the soil would be 'poor but variable'.

Appendix I

THE VARIOUS ENACTMENTS IN MORE DETAIL

Introduction

1. The following paragraphs describe the general Acts relating to commons since 1845. Most are still extant in whole or in part. Some of the general Acts of which the main purpose is unconnected with commons but which contain references to them are also briefly noted, e.g., the Acquisition of Land (Authorisation Procedure) Act, 1946.

2. There are in addition some four thousand private local Acts, mainly of the 18th and 19th Centuries, dealing with particular commons. Copies may be found either with the Clerks of the Peace, the stewards of manors, parish councils or diocesan registrars or in the Public Record Office or some other place like the Registry of Deeds, Wakefield. There are also copies in the library of the House of Lords. The scope of these Acts and of the awards made under them is not easily ascertainable. Nevertheless they are of practical importance because they may inhibit the use of the general Acts, for example a person wishing, say, to erect a fence on common land and seeking the Minister of Agriculture's consent by means of the procedure laid down in one of the general Acts, may well find himself inhibited in any case by a provision of a private local Act or an award made under it. This is because in many instances where common land has been inclosed by means of one of these Acts, part of the land has been reserved as open space by the appearance in the Award of such words as 'shall remain uninclosed' in relation to the particular part.

3. There are also modern private local Acts which provide, for example, for the acquisition of a common or part of one by a local authority in order, say, to lay out public gardens or to create a municipal aerodrome. If the Minister of Agriculture wishes to comment on or oppose the proposal, he may, in accordance with the usual private Bill procedure, make a report to Parliament; other Ministers, like the Minister of Housing and Local Government, may also do so.

4. When considering the law governing land affected by common rights, three classes of person must be borne in mind, namely, the owner of the soil (who is usually, but not always, the lord of the manor), the persons holding the common rights (usually referred to as 'the commoners') and the general public, who may or may not have rights of access by law or custom.

5. Many of the Acts in the following paragraphs refer to the Inclosure Commissioners. These are now defunct, their duties having been absorbed by the Minister of Agriculture, and reference is made throughout to 'the Minister' instead of the Commissioners where the power or duty is now the Minister's. The Acts are dealt with in chronological order, except that (i) amending Acts immediately follow the principal Act and (ii) Acts relating only incidentally to commons (e.g. the Acquisition of Land (Authorisation Procedure) Act, come in chronological order at the end.

The General Inclosure Act, 1845

Purpose

6. The main purpose of this Act was to facilitate the inclosure and improvement of commons and lands held in common—these are defined in Section 11 of the Act. In addition, the Act enables land to be exchanged by Order of the Minister. There were other provisions which are not relevant to this inquiry.

Provisions and Procedures

7. This Act has been largely superseded by the Commons Act, 1876, but a brief description follows because some of it is still extant and, in any case, it is a useful point at which to start as subsequent legislation is to some extent based on it. The Act set up Inclosure Commissioners and laid down the broad lines on which they should work and how inclosure should be made. Any proposal for inclosure was to be referred to an Assistant Commissioner who was to hold meetings to enquire into the correctness of the statements in the application and into the expediency of the proposal. He heard the objections and in due course advised the Commissioners whether or not to approve the inclosure and, if so, on what terms. In making their decision, the Commissioners were required by Section 27 to have regard to the health, comfort and convenience of the inhabitants of towns and villages nearby as well as to the private interests involved. If the Commissioners were satisfied that the inclosure was expedient, a Provisional Order was to be made setting out the terms and conditions applicable. In the case of lands subject to severalty rights, the Commissioners were empowered to inclose on their own authority until the power was repealed by the amending Act of 1852.

8. The Commissioners were required to give public notice of their intention to authorise an inclosure or to certify its expediency, to deposit locally a copy of the Provisional Order for inspection, to hold further meetings if they saw fit and, if and when the necessary consents to the Order were received (representing two-thirds in value of the relative legal interests), include the matter in their next annual report to Parliament and to obtain Parliamentary confirmation of the Provisional Order. Where the inhabitants of any city, borough or town were entitled to rights of common, the consent of two-thirds of their number was also necessary. The lord of the manor had a right of veto. If a proposal succeeded in passing the obstacles and went forward, the Commissioners could require a piece of the land to be reserved for public recreation and for an allotment to be made for the labouring poor.

9. The Act also laid down the duties of a valuer who was to be appointed to give effect to the terms and conditions of the Provisional Order when sanctioned. The valuer's powers were wide, but he had to follow much the same procedure as the Commissioners, for example, hold meetings, consider objections and so on, and a person who felt aggrieved by a valuer's decision on his claim in respect of the land could appeal to the Commissioners. The valuer was given power to set out and establish common ponds, ditches and watercourses, enlarge and cleanse those already existing, and set out public roads and ways. An appeal against the decision of the valuer on these matters could be made

to Quarter Sessions. With the prior authority of the Commissioners, the valuer was empowered to direct the extinguishment or suspension of rights of common over the land to be inclosed and also to give directions in respect of the husbandry. He could decide the compensation to be paid to an owner of growing crops and allot some of the land to the Surveyor of Highways for the supply of stone, gravel and other materials for road repairs. He was also able to define the land to be set aside as a recreation ground and as allotments for the labouring poor in addition to allocating the land where necessary between the lord of the manor and the commoners. The procedure for making the valuer's award was also laid down in detail—this is still followed.

10. Section 11 which defines the land which may be inclosed is an important part of the Act for today's purposes. The definition is wide and can be said to be basic to some of the subsequent legislation. It covers land subject to common rights at any time of the year, and all gated and stinted pastures and all lot meadows. Town and village greens are however protected from inclosure and the Act excludes the New Forest and the Forest of Dean from its provisions.

11. In addition to defining the land to which it applied, the Act in Section 16 defined the 'persons interested' for the purpose of making applications. The Section is elaborate but generally speaking the persons are those in actual possession or enjoyment of the land, or of any common right or of the manor of which the land is waste, or those in actual receipt of the rents and profits of the particular land.

12. In addition to inclosure, the Act also provided for the regulation of a common pasture, that is to say the determination of the rights over it and making provision for their enforcement. Although the particular method is now outmoded, there are pastures still governed by it. The procedure laid down was, in short, that persons representing in value more than half the interest in the common could apply to the Commissioners to have it converted into a regulated pasture. Land so regulated must be fenced and stints apportioned by a valuer. The valuer had to proceed, once again, in accordance with an elaborate procedure. Generally speaking, apart from the right of the lord of the manor to minerals, the ownership of the soil was to be vested in the persons allotted the stints. Control lay with a Field Reeve who was to be elected at an annual meeting of the stint owners. His duty, carried out under the general authority of the annual meeting, is to regulate the times of grazing and to do all that is necessary for the maintenance, improvement and good order of the pasture. He can levy a rate to meet expenses. Pastures already stinted before the Act was passed, for example, those from early times, could be brought within the Act; but the Act of 1899 repealed this.

13. Section 147 of the 1845 Act enables the Minister upon the application of those interested, to make an Order of Exchange of land. By this means, any land, with certain exceptions of which fuel allotments are one, can be exchanged by mutual agreement. The parties who wish to exchange land in this way must satisfy the Minister that the pieces of land are equal in value or at least are fair equivalents and that the exchange would be beneficial to both parties. A valuer, approved by the Minister, is appointed by the parties to examine the proposal in the light of the above criteria and to make a report including a valuation. Notice of the proposal must be given in the local press inviting objectors to write to the Minister. If the Minister is satisfied and no notice of dissent is given by anyone claiming an interest in the lands, an Order of Exchange is made under seal. The Order has the effect of a conveyance but is less expensive as it saves the trouble and cost of the investigation of titles, since the exchange is between the titles, and the land acquired is held under the same trusts and title as the land given up.

14. The Minister is also empowered to sort out intermixed lands, that is, lands divided into inconvenient parcels and for that reason incapable of being occupied and cultivated to the best advantage, and to make an Order dividing the land into convenient parcels.

15. The remainder of the Act deals with some procedure which is of minor importance, where it is relevant at all, and also with several matters unconnected with commons.

16. A number of amending Acts were subsequently passed. Nine of these made relatively minor amendments to the 1845 Act and are summarised below, the last one being in 1859. The next main Act was the Metropolitan Commons Act of 1866.

First Amendment Act, 1846

17. Under this Act power was given to vary and amend Provisional Orders in certain circumstances, and to make Supplemental Orders. The Act also dealt with detail concerning the exchange of allotments, the making of allotments to the lord of the manor or the making of a rent charge in lieu and empowers the steward or his deputy to consent on behalf of the lord of the manor. It also brought undivided shares of land, cattle-gates and stints within the exchange procedure of the 1845 Act.

Second Amendment Act, 1847

18. This Act dealt with such miscellaneous matters as laying down that where the title of the owner of the soil was in dispute then the consent of all parties to the dispute should be obtained to any proposal under the 1845 Act; and similarly where more than one person would come into a particular right or title; and that where an encroachment was of 20 years standing the rights of a person to that particular piece of soil should not be defeated. It enabled rights to mines, minerals, rights of way and other easements to be reserved when exchanges of land were taking place. It also covered several procedural details.

Third Amendment Act, 1848

19. This Act enabled the Commissioners when making a Provisional Order to incorporate any special agreement affecting the lands to be inclosed and enabled any person interested in lands outside the area to be inclosed to apply for them to be included. It permitted money to be paid in lieu of allotments of land of less than £5 in value when the common was parcelled out on inclosure. It enabled occupation roads to be set out for the use of lands other than those to be inclosed, and said who should pay. It dealt with the way in which certain expenses should be met and the necessary money raised. It altered the procedure as to the submission of claims to the valuer. Where the valuer had ordered rights to be extinguished or suspended before making his award, it enabled any person who, under the valuer's direction, took over possession of such lands to maintain an action for damages where the lands and equipment had been damaged. It allowed action to be taken against any person who failed to make a ditch or fence as required by the award.

Fourth Amendment Act, 1849

20. Apart from matters of general procedure, this Act enabled an allotment or allotments to be made to the lord of the manor in lieu of quit rents, chief rents and heriots to which he may have been entitled. It repealed in effect Section 28 of the 1845 Act by providing that where the lands proposed to be inclosed consisted of separate tracts the assent of the owners of two-thirds in value of the entirety was sufficient to enable the Commissioners to proceed. It extended in Section 7 the powers of exchange in Section 147 of the 1845 Act (see paragraph 13) to all rights of common, fishing, manorial and other rights and all easements over any land and certain types of rents.

Fifth Amendment Act, 1851

21. This Act has no direct bearing on commons as such.

Sixth Amendment Act, 1852

22. This Act repealed the power of the Commissioners to inclose land subject to severalty rights without the authority of Parliament. The remainder of the Act dealt with, in the main, procedural matters and the powers of the valuer.

Seventh Amendment Act, 1854

23. This Act dealt with procedural matters and certain legal definitions.

Eighth Amendment Act, 1857

24. This Act covered miscellaneous matters like the fencing of allotments, the sending of claims by post, the creation of rent charges to compensate inequality of value on an exchange or partition of land, the prevention of nuisances on town and village greens, and allotments for exercise and recreation.

Ninth Amendment Act, 1859

25. This Act laid down that the Provisional Order made by the Commissioners should specify whether or not a right was to be reserved to enter and work mines etc., and whether or not compensation for any damage to the surface was to be paid by the person exercising the right. The remainder of the Act, generally speaking, dealt with the application of money raised from the letting of pastures during the time that rights were suspended by the valuer, with the application of surplus money where small plots of land had been sold to defray the expenses of inclosure and with certain aspects of leases, agreements and tenancies.

Metropolitan Commons Act, 1866*Purpose*

26. This Act enables the Minister to make a scheme in respect of a common within the Metropolitan Police District establishing a local management with a view to improving the land by draining, levelling and so on, and to the making of byelaws to prevent nuisances and preserve order. Section 5 of the Act specifically prohibits the Minister from entertaining a proposal to inclose such a common or any part of it.

Provisions and Procedure

27. The first step is for the lord of the manor, or any of the commoners, or the local authority in whose area the land lies, to present the Minister with a memorial asking that a scheme be made. If the Minister sees fit, after making the necessary enquiries, he prepares a draft scheme which is printed and deposited locally for a period of two months to enable interested parties to lodge objection. Notice of deposit is given in the press and copies of the draft are sent to the memorialists, the lord of the manor and the local authority. At the expiration of the two months, the Minister may hold a public local inquiry. On receipt of the report, if an inquiry is held, the Minister may make a scheme in the form he considers expedient. The scheme must state how any rights are affected and whether the persons whose rights are affected consent to it. Compensation is payable to a holder of an affected right who has not consented. The scheme must be certified and sealed by the Minister, printed copies being sent to the three parties. An abstract is also published and circulated or displayed locally.

28. A scheme is not effective until Parliament has approved it either as it stands or with modifications. If a scheme is challenged it can be referred to a Parliamentary Select Committee who may hear representations. All expenses in connection with any proceedings under the Act must be met by the memorialists or a local authority. An amending scheme must follow the same procedure.

Metropolitan Commons Act, 1869

29. The Act extends the 1866 Act by enabling twelve or more ratepayers or inhabitants of a parish as well as those persons or bodies mentioned in Section 6 of the principal Act to present a memorial to the Minister.

Metropolitan Commons Act, 1878

30. This Act gives the Metropolitan Board of Works (now the London County Council) power to acquire and hold common rights exercisable on commons lying within the Metropolitan Police District. The Act also applies Section 30 (powers of County Courts to grant injunctions against illegal inclosures) and Section 31 (notice of intention to inclose) of the Commons Act, 1876, (see paragraph 40 (4)) to Metropolitan Commons.

Metropolitan Commons Act, 1898

31. This Act in the main provides that where the whole or any part of a Metropolitan Common lies within a municipal borough, no part being within the administrative County of London, the borough council shall be the local authority for the purpose of the Metropolitan Commons Acts.

Inclosure etc. Expenses Act, 1868

32. This amends the provisions of various Acts, including those 'for the Inclosure, Exchange and Improvement of Land', in respect of the meeting of certain expenses.

Commons Act, 1876

Purpose

33. The main purposes of this Act were (i) to facilitate the regulation and improvement of commons and (ii) to amend the law so as to make inclosure more difficult.

34. 'Regulation' under the Act covers the general administration of the common, including the appointment of conservators, the adjustment of rights affecting the common and its improvement. 'Adjustment' of rights means briefly the determination of who shall exercise rights and the manner and time of doing so. It can, for example, enable overstocking and disputes arising from a conflict of interest to be avoided, rights that may be injurious to be restricted or abolished, and boundary disputes to be settled. 'Improvement' includes draining, manuring, levelling, planting trees and generally adding to the beauty of the common.

35. Inclosure, for the purpose of this Act, means inclosure in severalty, that is the parcelling out of the land amongst all the persons legally interested. When inclosed, land, of course, ceases to be common.

Provisions and Procedure

36. The procedure is the same for regulation and inclosure. An application to the Minister for a Provisional Order must be made by persons representing at least one-third in value of the legal interests likely to be affected. The Provisional Order, if made, is recommended to Parliament by the Minister and, if approval is obtained from a Select Committee, the Minister introduces a Bill. Sections 9 to 14 of the Act lay down in detail all the stages leading up to the confirmation of the Provisional Order by Parliament. The following is an outline:

Preliminary Steps

1. The applicants must represent at least one-third in value of the interest in the common; therefore the consent of a proportion of the commoners and usually of the owner of the soil must be obtained to the application. For regulation, application may also be made by the administrative authority of any town of not less than 5,000 inhabitants, within six miles of the common; the consent of one-third in value of the interests in the common is still necessary.

2. Notice must be given to:

- (a) the councils of the parish or district in which any part of the common lies;
- (b) the administrative authority of any town within six miles of the common;
- (c) the public (through the local Press).

Local Inquiry

If the Minister is satisfied that there is a *prima facie* case for inclosure or regulation, he must hold a local inquiry, giving at least twenty-one days' notice.

Draft Provisional Order

If, in the light of the report on the local inquiry, the Minister is satisfied that inclosure or regulation is expedient, he prepares a draft Provisional

Order, and this is deposited locally for such time as he considers desirable. Objections may be raised and modifications made. The draft, as finally amended, must be approved by at least *two-thirds* in value of the interests in the common and by the owner of the soil. Where the freemen, burgesses or inhabitants of any city, borough or town have rights or interests in the common, the consent of two-thirds of their number must also be obtained. The Minister may, with a view to the benefit of the neighbourhood, insert in the draft Order certain provisions such as the securing of free access to beauty spots, the laying out of recreation grounds and so on (Section 7).

Report to Parliament

If and when the necessary consents are obtained, the Minister reports to Parliament certifying the expediency of the Provisional Order. The report is referred to a Select Committee who will hear evidence.

Parliamentary Bill

If the Select Committee reports in favour, a Bill to confirm the Provisional Order is introduced by the Minister and goes through the procedure for a private Bill. When passed it is deemed a public Act.

Appointment of a Valuer (Inclosure Act, 1845, Sections 33 and 34)

When the purpose is inclosure a meeting of the parties interested is convened by the Minister and a valuer is appointed. The valuer's duty is to take all the necessary steps to carry out the Act. He examines claims, prepares a detailed report showing how the land would be divided, and deposits a copy locally for inspection. He hears objections and considers proposals for amendment. When his report is finally drawn, he makes an Award which becomes effective on confirmation by the Minister.

Comment

37. This is an important Act because it materially governs the present law affecting commons. The preamble to the Act practically repeats the provision made in Section 27 of the General Inclosure Act, 1845 (see paragraph 7) that the Minister must be of the opinion that inclosure would be expedient having regard to 'the health, comfort and convenience of the inhabitants of any cities, towns, villages or populous places in or near any parish in which the land proposed to be inclosed, or any part thereof, may be situate as well as to the advantage of the persons interested in the common'. 'Health, comfort and convenience' is deemed to be included in the expression 'the benefit of the neighbourhood' used later in the Act, and 'the advantage of the persons interested in the common' is to be included in the expression 'private interests'. The preamble further states that 'it is desirable to make further provisions for bringing under the notice of the Inclosure Commissioners and of Parliament any circumstances bearing on the expediency of allowing the inclosure of a common, and that inclosure in severalty as opposed to regulation of commons should not be hereinafter made unless it can be proved to the satisfaction of the Commissioners and of Parliament that such inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in any such commons' and that 'It is expedient to give further facilities for enabling the Commissioners to regulate, improve, stint and otherwise deal with commons without wholly inclosing and allotting the same in severalty'. In the Act itself, Section 7, the Minister is merely told to take into consideration the question of 'benefit to the neighbourhood' both in relation to inclosure and regulation, although the Section does mention certain items which the Minister may insert in a scheme with a view to the benefit of the neighbourhood, for example, the safeguarding of access to beauty spots, the preservation of objects of historical interest or particular trees, the preservation of a right to play games on the common and so on. The Department's view, based on legal advice, is that there must be some benefit to the neighbourhood, as defined, in the proposal before it can succeed. It is easy to see how regulation can be of benefit to the neighbourhood as well as to the private interest but more difficult in respect of inclosure; it is, of

course, in the last resort a matter for the Minister's discretion, subject to Parliament.

38. The phrase 'the benefit of the neighbourhood' is now of prime importance, as will be seen when consideration is given later in this memorandum to Section 194 of the Law of Property Act, 1925 (see paragraphs 66 and 67). This Section specifically refers to the considerations laid down in the 1876 Act. Although practically the same expressions were used in the General Inclosure Act, 1845, it seems that the Department followed public opinion in tending to apply what is known as the 'benefit of the neighbourhood' clause more strictly as time went on, bearing in mind that the purpose of the 1876 Act was to discourage inclosure.

Other Provisions of Part I, Part II and Part III of the Act

39. The above occupies almost the whole of Part I of the Act. The remaining provisions of this Part (contained in Sections 15 to 20) are aside from the main purposes of the Act; they deal with

- (1) the making and confirmation of byelaws (15-17);
- (2) the compensation for loss of rights incidental to regulation—to be deemed part of the expenses of regulation (18);
- (3) the jurisdiction of the Charity Commissioners in relation to fuel allotments, recreation grounds and field gardens (19): this is further dealt with in subsequent legislation, including the Commons Act, 1899, the Allotments Acts, 1908-1930, the Charity (Fuel Allotments) Act, 1939 and the Education (Miscellaneous Provisions) Act, 1948 (recreation grounds);
- (4) the digging for gravel or other materials on a regulated common; this is forbidden except with the consent of the regulating authority or on a Justice's order.

40. Parts II and III of the Act are concerned almost wholly with miscellaneous amendments to the Inclosure Acts, including the repeal of Sections 24-27 of the 1845 Act which empowered the Inclosure Commissioners to make Provisional Orders for inclosure. The following matters are dealt with:

(1) Field Gardens and Recreation Grounds

Although these seem to be joined in Sections 21 and 28, they are different; field gardens are allotments set out under the Inclosure Acts for letting to the poor for cultivation. The amendments are mainly on points incidental to management.

(2) Town and Village Greens and Recreation Grounds

These are protected from inclosure by the Inclosure Acts; but Section 29, while reinforcing the powers of prosecuting offenders, permits certain modifications of the earlier Acts, for example, the erection of a pavilion, provided these are for the better enjoyment of the green or recreation ground.

(3) Commons: illegal inclosure, encroachment and nuisance

Section 30 gives the County Court certain jurisdiction and power to grant an injunction or order.

(4) Commons: where inclosure is intended otherwise than under this Act (see also Commons Act, 1893 (paragraph 46) and Commons Act, 1899 (paragraph 55))

Section 31 requires three months' notice to be given and requires the project to be advertised in the local Press.

(5) The appointment of a valuer

The appointment must be confirmed by the Minister (Section 32).

(6) Orders of Exchange, partition and division of intermixed lands (Section 33).

- (7) *The repeal of the Provisional Order procedure for inclosure under the 1845 General Inclosure Act; incidental matters affecting recreation grounds, annual reports etc.*

(Sections 24-27, 30 and 34).

- (8) *Metropolitan Commons*

Save as expressly provided, these are not subject to this Act (Section 35).

- (9) *Inclosure*

A common regulated under this Act may not be inclosed without the sanction of Parliament (Section 36)—except as now specially provided for in Section 42 of the Town and Country Planning Act, 1947.

41. There have been no inclosures under this Act since 1918; the last case of regulation was completed by an award in 1936—but the Provisional Order was embodied in an Act of 1919. There is, however, a current application for inclosure in respect of the Hexhamshire and Allendale Stinted Pastures in Northumberland. Present day reluctance to use the machinery of the Act for inclosure is probably due largely to the difficulty of satisfying the criteria, to the type of inclosure envisaged, i.e. in severalty, and, to the length of time and cost involved. Cost is a serious factor, since it arises not merely from carrying out the cumbrous procedure and having a Bill presented, but from providing the materials and labour for fencing off the parcels of land as allocated. The cessation of applications for regulation for amenity purposes, however, is almost undoubtedly due to the existence of the simpler and less expensive procedure provided by the Commons Act, 1899.

Commons (Expenses) Act, 1878

42. The Act enables the Minister to provide for the expense in regulating a common to be met by the proceeds of selling part of it. The Act also amends Section 14 of the Commons Act, 1876, which deals with the raising of money to improve a regulated common. The Minister may also make provision for allotments for the labouring poor on the regulation of a common.

Commons Act, 1879

43. This Act deals with the application of surplus rents for recreation grounds. It relates to Section 27 of the Commons Act, 1876.

Commonable Rights Compensation Act, 1882

44. This Act enables the Minister to make directions governing the application of compensation money paid to committees of commoners when part of a common has been inclosed under Statute. The money may be used only for the improvement of the remainder of the common; for defraying the costs of a scheme for the control and management of the land or of any legal proceedings taken to protect the common or commoners' rights; or for the purchase of land either to be used as common land or as a recreation ground for the neighbourhood. The direction must be in accordance with the terms of a resolution made by the majority of a meeting of those interested in the money.

Law of Commons Amendment Act, 1893

Purpose

45. The purpose of this Act is to prevent a lord of a manor from inclosing portions of the waste land of his manor, in pursuance of his ancient rights under the Statutes of Merton and Westminster the Second (see paragraph 10 of Part I), unless the Minister has consented.

Provisions and Procedure

46. As in Section 31 of the 1876 Act, notice of an application for consent must be given in the local Press, inviting objectors to communicate with the Minister. Three months are allowed for the lodging of objections. A local inquiry may be held if considered necessary and it is the Department's practice to obtain the views of the Commons, Open Spaces and Footpaths Preservation Society on

any proposal submitted. The Act directs that the Minister shall take into account the same considerations as for an application for inclosure under the Commons Act, 1876, that is to have particular regard to the benefit of the neighbourhood.

Commons Act, 1899 : Part I Regulation

Purpose

47. Part I of the Act enables a district council or county borough council to make a scheme, with the approval of the Minister, for the regulation and the management of any common or town or village green within its district (with the exception of those mentioned in Section 14) with a view to improving it and making byelaws to prevent nuisances and to preserve order.

Provisions and procedure

48. A council applying for approval to make a scheme is referred to the schedule to the Commons Regulations, made by the Minister under the Act. The current regulations—S.R. & O. 1935 No. 840—contain a model on which to base the proposed scheme. This model is annexed as Appendix II. The draft scheme when provisionally agreed by the Minister is deposited locally for three months to enable objectors to write to the Minister. The council must give notice in the local Press of their intention to make a scheme and must also serve and post notices as prescribed in the Commons Regulations, 1935; further they must furnish a Declaration to the Minister that this has been done and that the draft was available for inspection during the prescribed period. If necessary, the Minister will hold a local inquiry.

49. If the owner of the soil or persons representing one-third in value of the interests in the common object to the scheme the Minister may not proceed further in the matter. If a scheme is approved and the rights of any person are affected without his consent then compensation must be paid. The whole expense of a scheme is borne by the district council but where a rural district council is concerned contributions may be made by parish councils. A rural district council may vest the management of the scheme in a parish council and can acquire any right by agreement and hold it in mortmain for the purpose of the scheme. A scheme made under the Act may be amended or supplemented, but the Act does not provide for revocation once a scheme is made.

Comment

50. The sanction of Parliament is not required here. The Act provides a simple and inexpensive method of enabling local authorities to manage and improve commons where the exercise and recreation of the neighbourhood is the main consideration; the rights of the owner of the soil and the commons are reserved. The schemes are valid only so far as their provisions are authorised by the Act itself and are in accordance with the form prescribed in the Commons Regulations 1935 S.R. & O. 1935 No. 840.

Part II

51. This part contains several miscellaneous matters unconnected with commons as such but in Sections 19, 20, 21 and 22, commons are directly concerned.

Section 19

52. This Section amends Section 150 of the 1845 Act. The period of notice to be given by advertisement where an exchange of land is sought is reduced from three successive weeks and three months to two successive weeks and one month.

Section 20

53. This Section enables the Minister to adjourn meetings convened under the Metropolitan Commons Acts, 1866-1878.

Section 21

54. This Section repeals Section 20 of the Metropolitan Commons Act, 1866 and provides instead for annual reports to Parliament on proceedings under Part I of the 1899 Act as well as under the Metropolitan Commons Acts, 1866-1878.

Section 22

55. This Section prevents the grant or inclosure of parts of a common under the authority of the Enactments listed in the first schedule to the Act unless either the Minister of Agriculture consents or the grant or inclosure is specially authorised by an Act, or is made to or by a government department. The applicant must give notice of his intention in the local Press, three months being allowed for objectors to write to the Minister. A local inquiry is held if necessary. It may be noted, however, that the Department's practice is to obtain the views of the Commons, Open Spaces and Footpaths Preservation Society on any proposal submitted. The Minister must take into account the same considerations as for an application under the Commons Act, 1876, that is, in particular, to have regard to the benefit of the neighbourhood.

Commons Act, 1908

Purpose

56. The Act enables regulations to be made by the Minister controlling the turning out of entire animals on a common other than the New Forest or a common where conservators or other statutory body already have power to make byelaws on the matter.

Provisions and Procedure

57. On an application by three or more persons claiming a right to turn out animals on the common, the Minister may convene a meeting of all persons so entitled; 21 days' notice must be given. At this meeting, which may be adjourned as occasion requires, a scheme of regulation, together with a committee of control, may be decided on by a resolution passed by a majority in value of the interests. Objections may be lodged with the Minister, and the scheme is not effective unless confirmed by him.

Law of Property Act, 1925

Sections 193 and 194

58. These two Sections of the Act are more widely used than any other piece of commons legislation.

Section 193

Purpose

59. This Section of the Act confers upon the public a right of access for air and exercise to three classes of common, namely a metropolitan common; a manorial waste or a common which lies wholly or partly within a borough or urban district; and any other land which on 1st January, 1926, when the Act commenced, was subject to rights of common and to which this Section of the Act is applied by a deed, revocable or irrevocable, executed by the owner of the soil. The third category is often referred to as 'rural commons'. The Section ceases to apply if the common rights are extinguished under any statutory provision.

60. Upon the application of the owner of the soil or a commoner, the Minister can make an Order imposing limitations on, and conditions as to, the exercise of these rights of access. The rights are, in any case, subject to the provisions of any Act, scheme, byelaw, and Order regulating the use of the land and to certain general prohibitions laid down in Sub-Section (1) (c), for example, that no fires may be lit and no vehicles driven on the common.

Provisions and Procedures

61. A draft Deed granting the public rights of access to a rural common is submitted to the Minister in duplicate with plans. The Minister will comment on the terms and in due course the completed Deed is endorsed under seal as having been duly deposited with the Minister, who will inform the interested local authorities and the Chief Constable of the County. The original document is retained, a copy being returned to the owner of the soil.

62. The applicant for an Order of Limitations is required to give notice to the local authorities in whose areas any part of the common affected is situated and a draft of the proposed Order (agreed by the Minister) must be deposited locally for 21 days to enable interested persons to comment or object; notice of deposit must be published in the local Press. The Minister will hold a local inquiry if he sees fit. When an Order is made it is deposited at the Public Record Office and a certified copy is sent to the applicant who must erect and maintain permanent notices on specified parts of the common. The Minister will inform the local police and administrative authorities of the making of the Order.

63. Sub-Section (1) (d) of this Section provides means whereby an owner of the soil can secure the abolition of the public right of access to his land. There is no need for him to use this Sub-Section if he is the owner of the soil of a rural common and has made only a revocable Deed; it does not apply at all if he has made no Deed. The Sub-Section requires an owner of the soil to secure a resolution by the county council assenting to the exclusion of the land from the effects of the Section, and the Minister's approval of the resolution; he must also extinguish the common rights by agreement or prove their abandonment. The Minister is not concerned with the actual method of extinguishment of common rights, merely requiring a declaration that all the rights have, in fact, been extinguished or abandoned before he will approve the resolution. The owner of the soil is required to publish in the local Press notice of his intention to ask the council to assent to the exclusion of the land from the Section and objectors are invited to write to the Minister within one month. Copies of the notice as published are sent to the Minister, and he will send to the council, on request, copies of the objections without disclosing the names of the objectors. There is, of course, no reason why objectors should not write direct to the council if they wish. There is no particular sequence in the procedure but obviously an owner of the soil would be prudent to secure the resolution and at least ascertain the likely attitude of the Minister before attempting to extinguish the rights and pay compensation.

64. It is the Department's practice to obtain the views of the Commons, Open Spaces and Footpaths Preservation Society in these cases as, if the application is successful, rights of access cease. It should be noted, however, that this does not enable the owner to use his land freely because of the effect of Section 194 described below.

Section 194

Purpose

65. Under this Section, the erection of any fence or building or the construction of any other work which would impede or prevent free access to land subject to rights of common at the commencement of the Act (1st January, 1926) is unlawful without the consent of the Minister. A County Court is empowered on the application of a county district or borough council, the lord of the manor or any other person interested in the common to make an Order for the removal of an unlawful fence, building or work and for the restoration of the land. This Section also provides means whereby land may be excluded from its effects. The procedure is similar to that laid down for Section 193 and described above. The Section excludes buildings and works authorised by an Act or lawfully undertaken for working minerals and any telegraphic line defined in the Telegraph Act, 1878; it ceases to apply if the common rights are extinguished by any statutory provision.

Provisions and Procedure

66. The applicant must publish in the local Press notice of his proposal to seek the Minister's consent and inviting objectors to write to the Minister within three months. The Minister, in considering whether to consent, has to have regard to the criteria laid down in the Commons Act, 1876 and, if necessary, hold the same enquiries. It is the Department's practice to obtain the views of the Commons, Open Spaces and Footpaths Preservation Society on any proposal submitted.

Comment on both Sections

67. So far as the erection of fences, buildings and the construction of works are concerned, the difficulties mentioned earlier when considering the 1876 Act apply (paragraph 38). In view of the 'benefit of the neighbourhood' clause it is likely that an application for, say, consent to fence land so as to control grazing for agricultural purposes as distinct from fencing to prevent cattle straying on to a road and causing traffic accidents, will fail; it will be held to be for the benefit of the private interests and not of the neighbourhood. The construction of an access way across common land to enable the owner of a private house to reach a road as distinct from, say, the construction of an access way to a housing estate, is not considered to be to the benefit of the neighbourhood but of benefit only to the private interest. The distinction between one private house or even several, and a private or public housing estate is a very fine one and typifies the difficulty facing the Minister. Again, so far as commons legislation is concerned, consent for the laying of a water pipe for the benefit of the commoners may be prevented whereas the taking of a large portion of a common for the construction of a water supply or reservoir for towns, villages or housing estates nearby may be authorised.

68. The effect of excluding land from the operation of both Sections is that the land ceases to be common; of course, the land may cease to be common by the rights being extinguished or abandoned without its being excluded from the effect of the Sections. One commoner objecting to the extinguishment is sufficient to prevent the owner from achieving his object, even if he can satisfy the authorities of the desirability of exclusion. Further, there is a risk which inhibits the use of this procedure even if the owner of the soil has the agreement of the known commoners and can satisfy the authorities. The difficulty is simply that he may make every effort to find all the commoners, and fail. He will not know that he has failed, however, until someone subsequently claims and proves that he has common rights. If such a commoner does not wish his rights to be extinguished he can insist on exercising them and any fences and works may then be shown to be illegal and liable to removal.

69. Even if an owner of the soil were willing to take the risk, there may be a local Act of the 18th or 19th centuries which will prevent his fencing the land or part of it, or putting a building on it. An owner would therefore be wise to ascertain whether the common is governed by a local Act before embarking on the procedure laid down in Section 194.

Lands Clauses Consolidation Act, 1845

70. This is a general Act dealing with the compulsory acquisition of land by public authorities. Only certain Sections of it affect common land namely Section 5 and Sections 99-107. The Act is incorporated in a large number of local and private enactments as well as certain general Acts. It is procedural and the following is a brief outline.

71. So far as the land itself is concerned, upon the authority paying to the owner of the soil or depositing in a bank the amount of compensation money agreed, the land shall be conveyed to the authority. With regard to the common rights, the amount of compensation to be paid on extinguishment may be agreed between the authority, as the owner, and a committee of the commoners—to whom the money will be paid. The committee, not exceeding five in number, are appointed at a meeting of the commoners convened by the authority. The Act lays down the procedure for doing this. The committee apportions the compensation money among those entitled, according to the valuation of their respective interests. Provision is made for reference of disputes to an arbitrator; but the Lands Tribunal is now the body to whom all cases of disputed compensation for the compulsory purchase of land, including the purchase of the soil of commons and the extinguishment of common rights as part of a compulsory purchase, are referred for an award. They also determine the compensation to be paid where an owner of land to be compulsorily purchased cannot be found or where no committee has been appointed to treat with the Minister on the compensation for the extinguishment of common rights. Upon the authority depositing the compensation money in a bank and executing a Deed, it secures the land free

from all commonable and certain other rights and is entitled to immediate possession. A Court, on petition, is empowered to order payment of the money deposited to a committee appointed in accordance with the Act and may make an Order for the benefit of those interested.

Local Government Act, 1894

72. Sections 8 and 26 of this Act affect commons. Section 8 empowers a parish council to apply to the Minister under Section 9 of the Commons Act, 1876 for certain information about the regulation or inclosure of commons. It also requires that notice of any application to the Minister in respect of a common shall be given to the council of every parish in which any part of the common lies. Section 26 provides that a rural district council shall receive similar notification and empowers it, subject to the county council's consent, to help persons to maintain their common rights where their extinction would be prejudicial to the inhabitants. A rural district council with the county council's consent is also empowered to make representations under Section 8 of the Commons Act, 1876 in any proceedings for inclosure or regulation of a common as though it was an urban sanitary authority.

Light Railways Act, 1896

73. Section 21 of this Act requires the Minister's consent to the inclosure of common land. He is not to give his consent unless satisfied that (1) the purchase is necessary (2) no greater injury will be caused to the common than is necessary and (3) that where possible, other land will be added to the common in lieu of the land taken and that where the common is divided, convenient access will be provided.

Acquisition of Land (Authorisation Procedure) Act, 1946

74. This Act gives authority for certain procedure to be followed for the compulsory purchase of land by local authorities and by the Minister of Transport (for road development). It has now been extended so as to apply (with modifications and extensions in particular cases) to compulsory purchases by many authorities and Ministers under special Acts. Orders made under this Act affecting common land, open spaces or fuel and field garden allotments, are subject to special Parliamentary procedure⁽¹⁾ unless the Minister is prepared to give a certificate under either Paragraph 11 (1) (a) or 11 (1) (b) of the First Schedule to the Act.

75. Under Paragraph 11 (1) (a), the certificate required is to the effect that land not less in area is to be added to the 'common' to compensate for that to be compulsorily acquired; that the new land is as advantageous to all parties as was the land to be taken, and that the new land will be vested in those in whom the land to be taken was vested, and subject to the same rights, trusts, etc.

76. Certificates given under Paragraph 11 (1) (b) relate solely to road widening schemes and are to the effect that compensating land is unnecessary.

Hill Farming Act, 1946

77. Section 12 of this Act empowers the Minister to carry out improvements to hill farming land which is subject to rights of common of pasture. One half of the cost of the work is borne by those claiming such rights, or the ownership of the soil, who are willing to contribute. Public notice of intention must be given and work cannot be done if any person claiming common rights or ownership of the soil objects, unless the Minister is satisfied that the objection is groundless.

78. Any work carried out must not impede free access to the land for longer than three years from the date of the commencement of the work.

Agriculture Act, 1947 (Sections 85 and 92)

79. These Sections of the Act empower the Minister to purchase compulsorily agricultural land already in his possession under emergency powers, including

⁽¹⁾ The Orders are laid before Parliament for one month to enable representations to be made and become operative on the day following the expiration of the period if none is made.

common land requisitioned during the war. The purpose is to ensure that full agricultural use shall continue to be made of the land.

80. Orders authorising the compulsory purchase of common land are subject to the special Parliamentary procedure mentioned in paragraph 74.

81. The compulsory purchase of common land under Section 85 has been undertaken only after consultation with the Commons, Open Spaces and Footpaths Preservation Society and where local meetings of commoners convened by the Ministry have shown a measure of support for the proposal to purchase. No purchases of common land have yet been completed under these powers but negotiations are in progress in respect of 22. No new purchases are being undertaken.

Town and Country Planning Act, 1947

82. Part II of the Ninth Schedule to this Act repealed the whole of the Town and Country Planning Act, 1932.

83. Section 42 of the Act enables a local authority to appropriate for certain purposes any common land, open space or fuel or garden allotment for the time being held by them for other purposes. Orders are subject to special Parliamentary procedure, unless the Minister is prepared to certify under Paragraph 11 (1) (a) of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946, that land at least equal in area and equally advantageous to those enjoying rights over the acquired land, will be given in exchange.

Appendix II

COMMONS ACT, 1899:
REGULATION OF COMMONS
FORM OF SCHEME

*Description of
Common and
Management by
District Council.*

1. The piece of land with the ponds, streams, paths, and roads thereon, commonly known as _____ Common, situate in the Parish of _____ in the County of _____ and hereinafter referred to as 'the common' as the same is delineated in a plan sealed by, and deposited at the office of the District Council of _____, hereinafter called 'the Council' and thereon coloured green, being a 'Common' within the meaning of the Commons Act, 1899, shall henceforth be regulated by this Scheme and the management thereof shall be vested in the Council.

*Appointment of
Officers.*

2. The powers of the Council generally as to appointing or employing officers and servants and paying them under the general Acts applicable to the Council shall apply to all such persons as in the judgment of the Council may be necessary and proper for the preservation of order on and the enforcement of bye-laws with respect to the common and otherwise for the purposes of this Scheme, and the Council may make rules for regulating the duties and conduct of the several officers and servants so appointed and employed and may alter such rules as occasion may require.

*Protection and
improvement of
common.*

3. The Council may execute any necessary works of drainage, raising, levelling or other works for the protection and improvement of the common and may, for the prevention of accidents, fence any quarry, pit, pond, stream or other like place on the common, and shall preserve the turf, shrubs, trees, plants and grass thereon, and for this purpose may, for short periods, enclose by fences such portions as may require rest to revive the same, and may plant trees and shrubs for shelter or ornament, and may place seats upon and light the common, and otherwise improve the common as a place for exercise and recreation. Save as hereinafter provided, the Council shall do nothing that may otherwise vary or alter the natural features or aspects of the common or interfere with free access to any part thereof, and shall not erect upon the common any shelter, pavilion, drinking fountain, convenience or other building without the consent of the person or persons entitled to the soil of the common and of the Minister of Agriculture, Fisheries and Food (in this Scheme referred to as 'the Minister'). The Minister, in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act, 1876(a), to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

*Against encroach-
ment.*

4. The Council shall maintain the common free from all encroachments and shall not permit any trespass on or partial or other enclosure of any part thereof.

*Public right of
access and
recreation.*

5. The inhabitants of the district and neighbourhood shall have a right of free access to every part of the common and a privilege of playing games and of enjoying other species of recreation thereon subject to any bye-laws made by the Council under this Scheme.

Preservation of objects of interest.

6. The (*here insert description of any particular trees or objects of historical, scientific or antiquarian interest*) are, so far as possible, to be preserved by the Council.

Maintenance and construction of paths and roads.

7. The Council shall have power to repair and maintain the existing paths and roads on the common other than highways repairable by the inhabitants at large, and to set out, construct, and maintain or authorise the construction and maintenance of such new paths and roads on the common as appear to the Council to be necessary or expedient, and to take any proceedings necessary for the stopping or diversion of any highway over the common.

Games, etc.

8. The Council may set apart for games any portion or portions of the common as they may consider expedient, and may form grounds thereon for cricket, football, tennis, bowls and other similar games, and may allow such grounds to be temporarily enclosed with any open fence, so as to prevent cattle and horses from straying thereon; but such grounds shall not be so numerous or extensive as to affect prejudicially the enjoyment of the common as an open space or the lawful exercise of any right of common, and shall not be so near to any dwelling-house or road as to create a nuisance or be an annoyance to the inhabitants of the house or to persons using the road.

Parking Places.

9. The Council may, with the consent of the person or persons entitled to the soil of the common and of the Minister temporarily set apart and fence such portion or portions of the common as they may consider expedient for the parking of motor and other vehicles, and may make such charges for the use of such part as they may deem necessary and reasonable: provided that any area so set apart shall not be so near to any dwelling-house as to create a nuisance or be an annoyance to the inhabitants of the house. The Minister in giving or withholding his consent, shall have regard to the same considerations and shall, if necessary, hold the same enquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

*Bye-laws.**

10. The Council may, for the prevention of nuisances and the preservation of order on the common, and subject to the provisions of Section 10 of the Commons Act, 1899, make, revoke, and alter bye-laws: such bye-laws may, without prejudice to the generality of the foregoing provisions of this paragraph, be for any of the following purposes, viz. :—

- (a) For prohibiting the depositing of rubbish and the leaving of litter on the common.
- (b) For prohibiting any person without lawful authority from digging cutting or taking turf, sods, gravel, sand, clay or other substance on or from the common, from placing, or leaving on the common any road-sand, materials for repair of roads or wood and from cutting, felling or injuring any gorse, heather, timber, or other tree, shrub, brush-wood or other plant growing on the common.

** Paragraph 10 (bye-laws)*

It will be noted that this paragraph differs from that set out in the Commons Regulations 1935 (S.R. & O., 1935, No. 840). It is based on a Home Office recommendation that this paragraph should be brought into line with the more recent developments in the general law as indicated, for example, in the National Parks and Access to the Countryside Act, 1949, and it is suggested that this revised version might be incorporated in any new Scheme.

- (c) For regulating the place and mode of digging and taking turf, sods, gravel, sand, clay, or other substance and cutting, felling and taking trees or underwood on or from the common in exercise of any right of common or other right over the common.
- (d) For prohibiting the injury, defacement, or removal of any works or property maintained by the Council on the common.
- (e) For prohibiting or regulating the posting or painting of bills, placards, advertisements, or notices on trees or fences, erections or notice-boards on the common.
- (f) For prohibiting any person without lawful authority from bird catching, setting traps or nets or laying snares for birds or other animals, taking birds' eggs or nests, and shooting or chasing game or other animals on the common.(b)
- (g) For prohibiting the drawing, driving or placing upon the common or any part thereof without lawful authority of any carriage, cart, caravan, truck, motor-cycle or other vehicle or any aircraft (except in the case of accident or other sufficient cause); or camping or the lighting of any fire thereon.(c)
- (h) For regulating, in the case of a fair lawfully held, and in any other case for prohibiting or regulating the placing on the common of any show, exhibition, swing, roundabout or other like thing.
- (i) For prohibiting or regulating the firing or discharge of fire-arms or the throwing or discharge of missiles on the common.
- (j) For regulating games to be played and other means of recreation to be exercised on the common, and assemblages of persons thereon.
- (k) For regulating the use of any portion of the common temporarily enclosed or set apart under this Scheme for any purpose.
- (l) For prohibiting or regulating the driving, exercising or breaking in of horses without lawful authority on any part of the common.
- (m) For prohibiting any person without lawful authority from turning out or permitting to graze on the common any cattle, sheep or other animals.
- (n) For prohibiting or regulating bathing in any pond or stream on the common.
- (o) For prohibiting the hindrance or obstruction of an officer of the Council in the exercise of his powers or duties under this Scheme or under any bye-law made thereunder.
- (p) For authorising any officer of the Council, after due warning, to remove from the common any vehicle or animal drawn, driven or placed, or any structure erected or placed thereon in contravention of this Scheme or of any bye-law made under this Scheme, or to remove from the common any person who within his view infringes any such bye-law or any provision of the Vagrancy Acts.(d)

(b) Bye-laws under this sub-paragraph should only relate to matters not already within the purview of the general law or any local provisions relating to wild birds and game.

(c) This paragraph should not be included in a scheme relating to a common to which s. 193 of the Law of Property Act, 1925, applies (except as far as aircraft are concerned). Bye-laws under this paragraph should not be made in respect of matters within the scope of s. 14 of the Road Traffic Act, 1930.

(d) 5 Geo. 4. c. 83 and 25 and 26 Geo. 5. c. 20.

*Publication of
bye-laws on
common.*

11. All bye-laws made under this Scheme shall be published on notice boards placed on such parts of the common (not less than) as to the Council may appear desirable.

*Saving of rights,
etc., in the soil
and highways.*

12. Nothing in this Scheme or any bye-law made thereunder shall prejudice or affect any right of the person entitled as lord of the manor or otherwise to the soil of the common, or of any person claiming under him, which is lawfully exercisable in, over, under, or on the soil or surface of the common in connection with game, or with mines, minerals, or other substrata or otherwise, or prejudice or affect any right of the commoners in or over the common or the lawful use of any highway or thoroughfare on the common, or affect any power or obligation to repair any such highway or thoroughfare.

Copies of Schemes.

13. Printed copies of this Scheme shall at all times be sold at the office of the Council to all persons desiring to buy the same at a price of each.(e)

(e) The price should not be more than 6d.

Appendix III

Regulation and Inclosure of Commons under Various Acts to 30th November, 1955, by Counties

TABLE I

County	Commons Act, 1876				Law of Commons Amendment Act, 1893				Commons Act, 1899			
	Regulation Schemes		Inclosures		No. of Cases	Area	No. of Cases	Area	Regulation Schemes		No. of Cases	Area
	No. of Cases	Area	No. of Cases	Area								
Bedford	2	A. R. P. 267	1	A. R. P. 1,700	—	A. R. P. —	5	A. R. P. 174	3	A. R. P. 2	1	29
Berkshire	—	—	1	1,357	2	2 27	9	—	3	—	1	20
Bucks.	—	—	—	—	—	—	9	271	4	—	—	31
Cambridge	—	—	1	1,164	—	—	1	158	—	—	2	24
Cheshire	1	79	1	205	—	—	5	55	3	—	2	3
Cornwall	—	—	1	347	—	—	—	—	1	—	—	5
Cumberland	2	2,935	2	3,308	—	—	4	35	3	—	5	14
Devon	—	—	—	—	1	2 2	1	30	2	—	—	39
Derby	—	—	—	—	—	—	3	26	—	—	—	—
Dorset	—	—	—	—	—	—	2	29	—	—	1	—
Durham	—	—	—	—	—	—	2	99	—	—	—	21
Essex	3	169	—	—	2	3	8	476	—	—	9	12
Gloucester	2	1,478	2	1,144	—	—	13	775	—	—	3	—
Hants	1	28	—	—	2	1 17	12	661	—	—	34	14
Hereford	—	—	—	—	2	2	9	765	—	—	141	14
Hertford	1	431	—	—	1	24	18	1,183	—	—	9	2 15
Huntingdon	—	—	—	—	—	—	—	—	—	—	—	—
Kent	2	312	—	—	6	8 35	10	850	—	—	4	13
Lancashire	—	—	—	—	—	—	6	145	—	—	3	30
Leicester	—	—	—	—	—	—	—	—	—	—	—	—
Lincoln	—	—	1	1,564	—	—	—	—	—	—	—	—
Midsex	—	—	—	—	2	1 34	—	—	—	—	5	—
Norfolk	—	—	—	—	—	—	—	—	—	—	—	27
Northants	—	—	2	3,305	—	—	8	880	—	—	—	—

Transactions regarding Commons under the Law of Property Act, 1925 to 30th November, 1955, by Counties

TABLE II

County	Law of Property Act, 1925							
	S. 193 Deeds		S. 193 Orders		S. 193 Resolutions		S. 194 Inclosures	
	No. of Cases	Area	No. of Cases	Area	No. of Cases	Area	No. of Cases	Area
Bedford	—	A. R. P.	—	A. R. P.	—	A. R. P.	—	A. R. P.
Berkshire	6	2,165 1 30	3	1,367 3 4	—	—	—	—
Bucks.	5	319 1 36	1	105 2 —	—	—	—	—
Cambridge	1	48 — 12	—	—	—	—	—	—
Cheshire	—	—	—	—	—	—	—	—
Cornwall	4	8 2 12	—	—	—	—	—	—
Cumberland	2	7,276 3 —	1	7,245 —	—	—	—	—
Devon	10	10,268 2 7	5	9,370 1 18	—	—	—	—
Derby	1	41 2 20	1	41 2 20	1	—	—	—
Dorset	—	—	—	—	—	—	—	—
Durham	—	—	—	—	—	—	—	—
Essex	3	265 — 36	—	—	—	—	—	—
Gloucester	9	1,065 2 4	2	453 —	—	—	—	—
Hants.	15	2,627 3 26	6	986 1 23	2	7 2 5	2	7 2 5
Hereford	1	340 —	—	—	—	—	—	—
Herts.	8	755 2 27	6	714 2 4	—	—	—	—
Huntingdon	—	—	—	—	1	1 2 13	—	—
Kent	2	500 2 —	1	112 —	—	—	—	—
Lancashire	1	2,110 2 —	—	—	—	—	—	—
Leicester	—	—	—	—	—	—	—	—
Lincoln	1	25 —	—	—	—	—	—	—
Middlesex	1	34 3 —	1	141 1 —	—	—	—	—
Norfolk	1	12 2 21	1	12 2 21	—	—	—	—
Northants	—	—	—	—	—	—	—	—
Nottingham	—	—	—	—	—	—	—	—
Northumberland	—	—	—	—	—	—	—	—
							1	86 3 8

Oxford	1	24	-	17	1	24	-	35	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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• This deed also covers land in Caernarvon, Carnarthen, Denbigh, Flint, Merioneth and Naindon. The total area of association involving 348 acres approximately.

† Includes 5 Deeds of Revocation involving 346 acres approximately.

Cases completed under Various Acts

TABLE III

Year	Metro- politan Commons Acts, 1866-98	Commons Act, 1876		Commons Amend- ment Act, 1893	Commons Act, 1899		Commons Act, 1908	Law of Property Act, 1925						
		Inclo- sures	Regu- lations		Regu- lations	Inclo- sures		S. 193 Deeds	S. 193 Orders	S. 193 Reso- lutions	S. 194 Inclo- sures	S. 194 Reso- lutions		
1869	1	—	—	—	—	—	—	—	—	—	—	—	—	—
1870	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1871	2	—	—	—	—	—	—	—	—	—	—	—	—	—
1872	1	—	—	—	—	—	—	—	—	—	—	—	—	—
1873	1	—	—	—	—	—	—	—	—	—	—	—	—	—
1874	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1875	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1876	1	—	—	—	—	—	—	—	—	—	—	—	—	—
1877	3	—	—	—	—	—	—	—	—	—	—	—	—	—
1878	—	5	—	—	—	—	—	—	—	—	—	—	—	—
1879	—	4	2	—	—	—	—	—	—	—	—	—	—	—
1880	1	4	2	—	—	—	—	—	—	—	—	—	—	—
1881	1	3	3	—	—	—	—	—	—	—	—	—	—	—
1882	3	3	2	—	—	—	—	—	—	—	—	—	—	—
1883	—	1	—	—	—	—	—	—	—	—	—	—	—	—
1884	1	—	1	—	—	—	—	—	—	—	—	—	—	—
1885	—	1	1	—	—	—	—	—	—	—	—	—	—	—
1886	1	—	2	—	—	—	—	—	—	—	—	—	—	—
1887	—	—	2	—	—	—	—	—	—	—	—	—	—	—
1888	2	—	1	—	—	—	—	—	—	—	—	—	—	—
1889	—	—	1	—	—	—	—	—	—	—	—	—	—	—
1890	—	1	—	—	—	—	—	—	—	—	—	—	—	—
1891	1	—	—	—	—	—	—	—	—	—	—	—	—	—
1892	—	—	1	—	—	—	—	—	—	—	—	—	—	—
1893	2	—	1	—	—	—	—	—	—	—	—	—	—	—
1894	—	—	2	—	—	—	—	—	—	—	—	—	—	—
1895	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1896	—	—	—	1	—	—	—	—	—	—	—	—	—	—
1897	—	—	—	1	—	—	—	—	—	—	—	—	—	—

Cases completed under Various Acts (Contd.)

Year	Metropolitan Commons Acts, 1866-98	Commons Act, 1876		Commons Amend- ment Act, 1893	Commons Act, 1899		Commons Act, 1908	Law of Property Act, 1925				
		Inclo- sures	Regu- lations		Regu- lations	Inclo- sures		S. 193 Deeds	S. 193 Orders	S. 193 Reso- lutions	S. 194 Inclo- sures	S. 194 Reso- lutions
1938	—	—	—	—	1	3	—	3	4	—	6	—
1939	—	—	—	1	1	7	—	7	1	—	1	—
1940	—	—	—	—	—	—	—	—	1	—	—	—
1941	—	—	—	—	2	—	—	—	—	—	—	—
1942	—	—	—	—	—	—	—	1	—	—	—	—
1943	—	—	—	—	—	—	—	1	—	—	—	—
1944	—	—	—	—	—	—	—	—	—	—	—	—
1945	—	—	—	—	—	2	—	—	—	—	3	—
1946	—	—	—	—	2	1	—	1	—	—	4	—
1947	—	—	—	—	—	3	—	—	—	—	—	—
1948	—	—	—	1	—	1	—	—	—	—	8	—
1949	—	—	—	—	11	3	—	—	—	—	9	—
1950	—	—	—	1	4	8	—	2	2	—	7	—
1951	—	—	—	—	7	5	—	3	—	1	—	—
1952	—	—	—	—	5	5	—	1	—	—	11	—
1953	—	—	—	—	3	4	—	2	1	—	12	—
1954	—	—	—	1	2	3	—	2	1	—	15	—
1955	—	—	—	—	3	3	—	3	—	1	8	—
Total	33	28	35	45	258	149	17	127	48	7	206	11
Cases Dropped	16	1	1	13	52	16	2	4	11	1	34	1
Total Appli- cations	49	29	36	58	310	165	19	131	59	8	240	12

Appendix IV

NOTES ON LEGAL AND OTHER TERMS

- Adjustment of rights.* A comprehensive term used in the Commons Act, 1876, to denote the legal process of determining, fixing, modifying or abolishing rights of common of persons claiming such rights when the land is regulated under that Act.
- Agistment.* The pasturing of animals on another's land in return for payment.
- Appendant.* A right by common law incident to the grant to certain tenants of arable land in the manor before the Statute of Quia Emptores (18 Edw. I c. 1 1289/90) by which the tenant is entitled to the use of the manorial waste for such purposes as are necessary for the maintenance of his husbandry.
- Appurement.* A right enjoyed by a lord of a manor to inclose the superfluous 'waste' land.
- Appurtenant.* A right of user of a particular waste depending upon a grant, or upon prescription supposing a grant. The right is annexed to land not necessarily of the manor.
- Award.* The final binding document in connection with the inclosure or regulation of a common under an Act of Parliament, setting out all the details of allotments, boundaries, expenses, adjustment of rights, powers and duties of conservators, etc.
- Cattlegates.* This is a name given to certain commonable lands and largely prevails in the North of England. The rights over these lands are also known by this name although the expressions 'beastgate', 'pasture-gate' and 'stints' are used as alternatives. It has been suggested that the word 'gate' should be 'gait'. Cattlegates were in the nature of copyhold tenements but as copyhold has been abolished they are now freehold. A cattlegate owner in this capacity is not necessarily the owner of the soil. The right seems to have always been for a particular number of beasts with an equivalent according to the type of stock. It can be bought and sold.
- Chief rent.* A rent paid by a freeholder to the lord of the manor. (This is not its usual modern meaning, which is irrelevant in this context.)
- Commonable land.* A term often used nowadays for land over which common rights exist but which is not manorial waste.
- Demesne.* That part of the lands of a manor which the lord has not granted out in tenancy, but which is reserved for his own and his retainers' use and occupation subject to rights of common.
- Enclosure.* (See 'Inclosure'.)
- Encroachment.* Unlawful interference with another's rights, e.g., the fencing off of part of a common. The term is also used for the piece of land affected.
- Entire animals.* Uncastrated animals.
- Estovers.* The common right, appurtenant or in gross, of cutting and taking wood, underwood, bushes, tree-loppings, fern, gorse, etc., for fuel (fire bote), for repairing the house (house bote), for repairing husbandry implements and carts (plough bote, cart bote), for repairing hedges or fences (hey bote or hedge bote).
- Field garden allotments.* That part of a common inclosed under the Inclosure Acts which is required to be set out for the benefit of the labouring poor of the parish or district.
- Field reeve.* A person elected at a meeting of the stinholders to manage and control a 'regulated pasture' set out under an Award under the Inclosure Acts.

- Fuel allotment.* Land set out usually under an Inclosure Act or Award for the exercise of turfary rights, i.e., the taking of turf or peat.
- Gated pasture.* (See 'Cattlegates'.)
- Geese, goats and swine.* These are not 'commonable animals', unless by special custom or usage.
- Half-year land.* (See 'Lammas Land'.)
- Heriot.* The best beast or chattel of a tenant which the lord was entitled to take on the tenant's death. This is now abolished.
- Inclosure.* This word is often used to mean several different processes which may or may not in its legal sense involve inclosure. The essence of the term is the extinguishment of the common rights. The prevention or impeding of access by the erection of a fence may be mere encroachment if used, for example, to prevent commoners exercising their rights; on the other hand a fence may be erected by commoners to keep the public off the common without its being inclosure.
- Inclosure in severalty.* The parcelling out of a common or commonable land amongst all the persons legally interested usually in proportion to the value of their respective interests.
- In gross.* A class of common right held by grant or prescription irrespective of the ownership of any land.
- Lammas land or half-year land.* A class of commonable land, arable or meadow, held and farmed in severalty during part of the year, but, when the crop is gathered, thrown open to the severalty owners and other classes of commoners. The usual day for the throwing open is Lammas day (1st August), and the lands remain open until Lady day (25th March). Other dates that have been used are from Old Lammas day (12th August) to Old Lady day (6th April). See also 'Shack'.
- Levancy and couchancy.* The measure of the right of common appendant. Originally the number of commonable animals, i.e., horses, cattle and sheep required in the tillage of the farm, it later became the number of commonable animals which the land to which the right is appendant will maintain by its produce through the winter. Such animals are said to be levant and couchant upon the land.
- Manor.* A local political and social unit of feudal times; the term also means the land held by the lord as the lord of a particular manor.
- Manorial waste.* Part of the demesne of a manor left uncultivated, over which freehold tenants, and sometimes others, have rights of common.
- Merton.* The Statute of Henry III now known as the Commons Act, 1236, which enabled the lord of a manor to inclose or approve portions of the common waste against the tenants of the manor having rights appendant provided that sufficiency of pasture was left for the commoners to depasture their animals with convenient access; this must not be injurious to the exercise of other common rights, e.g., turfary or estovers.
- Metropolitan common.* Any common the whole or any part of which is within the area of the Metropolitan Police district as at the date of the passing of the Metropolitan Commons Act, 1866.
- Piscary.* The common right of taking fish from water owned by another. It is not applicable to tidal navigable rivers and cannot exist in the sea.
- Pur cause de vicinage.* A right of common of pasture exercised over contiguous wastes by the cattle of adjoining manors.
- Quia Emptores.* A Statute (18 Edw. I, c. 1 1289/90) which forbade sub-infeudation, i.e., manorial lands sold thereafter were not held freely of the manor as prior to the Statute, but became severed from the manor.

Such land cannot have a right of common appendant. Common appendant is accordingly limited to land in the manor prior to this Statute.

- Quit rent.* A rent payable by a tenant of the manor to the lord in token of his being 'quit' of the obligation to provide services. This has now been abolished with other manorial incidents.
- Regulated pasture.* Under the Inclosure Act, 1845, the whole or part of a common could be converted into a 'regulated pasture'. The control of the pasture was in the hands of a Field Reeve, subject to the direction of the annual meeting of the stint owners. The ownership of the soil (subject to the reservation of any mines or minerals to the lord of the manor) belongs to the owners of the stints as tenants in common.
- Severalty rights.* Rights in severalty in relation to common land are usually rights of cultivation, and are held by persons separately in respect of particular parts of that land; these rights are in contradistinction to rights in common, where a person holds rights over the whole land in common with others.
- Shack land.* Arable land held in severalty during part of the year until the crop is removed, and then made commonable only to the parties with the severalty rights, who may turn out their beasts at shack (i.e., at large). (See also 'Lammas'.)
- Sole vesture and sole pasture.* Vesture is the right of a person, or body of persons, during the whole or part of a year to take all the sweepage on land, i.e., everything falling to the sweep of the scythe. It excludes participation by the soil owner. Pasture is similar, but allows the taking to be only by the mouths of cattle; it is not limited to commonable animals.
- Stint.* A term denoting the number and kinds of animals a common right holder is entitled to put on the common.
- Turbary.* A right of common for the taking of peat, turf, etc., for fuel.
- Undivided land.* In the extreme south west there is land called undivided land. It is reputed to be owned in common but it is possible that there are stint owners who also own the soil as well as the common rights.
- Undivided shares.* Persons holding land in undivided shares each have a right to the whole, e.g., a gated pasture in which the property of the soil is in the owners of the stints.
- Village green.* A term applied to a piece of open land in a village used by all and sundry for recreation, and sometimes subject to rights of common pasture. No legal definition exists, but there are several laws for its protection, or improvement, e.g., s. 15 Inclosure Act, 1845; s. 14 Inclosure Act, 1852; s. 12 Inclosure Act, 1857; s. 29 Commons Act, 1876; and s. 15 Commons Act, 1899. The essential characteristic is that by immemorial custom the inhabitants of the town or village should have acquired the right of playing lawful games on the green and enjoying it for recreation.
- Waste.* (See 'Manorial Waste'.)
- Westminster the Second.* This Statute, now known as the Commons Act, 1285 (13 Edw. I c. 46), extends the principle of the Statute of Merton so that, on an appropment (i.e., inclosure) by the owner of a waste, there must be left sufficiency of pasture not only for the tenants of the manor having rights appendant but also for the persons not tenants of the manor having rights of pasture appurtenant.

Second Memorandum of Evidence Submitted by The Ministry of Agriculture, Fisheries and Food

1. The Ministry has already submitted for the information of the Commission an introductory memorandum on the law of commons and the condition of common land; and the present memorandum takes the earlier one as its background.

2. The administration of the present law of commons is very difficult, and in a number of cases it is impossible to take any positive action which is in the interests either of the commoners themselves, of the general public in search of air and exercise, or of the nation. This memorandum attempts, first to set out some of the general difficulties to which the present law gives rise from the standpoint of the different interests, and secondly, to show how these difficulties affect agriculture and forestry.

The Interests of the Commoners

3. One important purpose of the law of commons is the protection of the commoners from expropriation by the owner of the soil or some other private person. The measures adopted are, however, essentially a process of freezing the common rights in the form in which they have always existed, and of making any modification very difficult. In the rearguard action against inclosure, the possibility that the commoners themselves might benefit by suitable provisions for improvement appears not to have been taken into account.

4. Circumstances may sometimes arise in which the commoners would derive greater benefit from the conversion of their common rights into some other form of tenure. For example, they could benefit from apportionment of the land as unencumbered freehold among the commoners and the owner of the soil; or from the grant of tenancies over a share of the land, or of joint tenancies over the whole of it, allowing freedom of cultivation.

5. These various options, as the law now stands, entail inclosure either by unanimous agreement or by means of an inclosure award.

6. Inclosure by unanimous agreement is rarely practicable. Apart from the difficulty which is usually found in obtaining unanimity in a large group, there is exceptional difficulty in establishing with certainty that all the commoners have been traced and persuaded to agree; and an agreed inclosure is liable to be upset *post factum* by the appearance of a commoner who was not known to have an interest and was not consulted, and therefore remains free to apply to the Courts for damages, or a restraining order, or to exercise his traditional rights over the land to the detriment of the other parties.

7. The procedure for a statutory inclosure award laid down in the Commons Act, 1876, as amended, is involved and almost unworkable. Under this procedure the Minister of Agriculture, Fisheries and Food carries out inquiries to establish that the majority of the interested parties are in favour of the inclosure and that the inclosure is of 'benefit to the neighbourhood' in the special sense of benefit to neighbouring populous places. Experience shows that it is usually very difficult to establish this benefit in connection with inclosure proposals. Assuming that these obstacles have been surmounted, the procedure ends with a report by the Minister to Parliament and the introduction of a Bill by him. But piloting the Bill through its subsequent Parliamentary stages is the responsibility of the parties, and they may be involved in considerable trouble and expense, especially if the Bill is contested, in what is virtually equivalent to the procedure for a private Bill. As a result of this, the provisions for statutory inclosure have become almost a dead letter.

8. A number of special obstructions to the agricultural improvement of commons will be described later. It should be noted here that under the present law inclosure by agreement does not suffice to remove the difficulties in the way of the erection of fences and buildings and the construction of works on a common. Section 194 of the Law of Property Act, 1925, allows such works and buildings only with the consent of the Minister of Agriculture, Fisheries and Food; and this consent can rarely be given because, if the land was subject to common rights on 1st January,

1926, the Minister is required either to establish 'benefit to the neighbourhood'—which is usually impossible when the works and buildings serve an economic purpose—or to be shown that the county or county borough council have assented to the exclusion of the land from the operation of Section 194. The only way of getting over this difficulty is an inclosure award or a private Bill.

9. Past inclosure awards embodied in private Acts of the 18th century often provide for certain common land 'to remain uninclosed'. The incubus of these private Acts could be removed in the commoners' interest only by further legislation.

10. Rights other than of grazing e.g. turbary and estovers, though no doubt valuable in former times, are, generally speaking, little used today and frequently neglected. Any project for reclamation and the like which encroached on these rights but did so with provision for the commoners to share in the advantage of the improvement, might well be welcome to them. It should be noted that in rural areas, outside the metropolitan and town boroughs and urban districts, it is the exception for common land to be open space accessible as of right to the general public for air and exercise. In some cases there is a restricted right of access by local inhabitants, but even this is thought to be true only in the minority of cases. The inclosure or fencing of commons in the interests of the commoners themselves would not, in such instances, affect the rights of the public in any way.

The Interests of the General Public

11. The legal provisions for the preservation of commons as open spaces for the enjoyment of the general public, and for improvement of their amenities, vary according to whether the common is located in a metropolitan borough; a borough or urban district; or a rural district.

12. From the point of view of the general public, the position is least satisfactory in the rural districts. There is no general right of access to rural commons for air and exercise. A limited number of rural commons have been made accessible to the public by deed executed by the owner of the soil under Section 193 (2) of the Law of Property Act, 1925. There are probably some rural commons where local inhabitants have customary rights of access; but in these cases there are no satisfactory means, short of recourse to the Courts, of establishing the legal position. In the majority of cases there is probably no right of access at all.

13. It is often urged that there are substantial areas, which are not capable of significant agricultural improvement or suitably placed for development, but to which the public are denied access by law, and that these could with advantage be thrown open to the public. If that were done, the rural district councils would be able to make more use of the power given them by the Commons Act, 1899, to manage and improve the commons under regulation schemes.

14. In the boroughs (including metropolitan boroughs) and urban districts there is a statutory right of access to commons. The provisions under which the local authorities may make schemes for the improvement and management of the amenities of the commons seem on the whole to be reasonably satisfactory. There are however two obstacles to the full development of commons as open spaces for public recreation. First, there is no obligation on, but only a power in, the local authority to make a regulation scheme, and there is no 'default power'. Secondly, if the owner of the soil or one third of the private interests in the common object to a regulation scheme, the scheme cannot be made. For one or other of these reasons, the power has not been used in every case and a number of urban commons have become derelict and impassable. The opportunity for saving them has been lost and they could now be reclaimed only at great expense.

15. The powers of management and regulation given to the district and borough councils have enabled much good work to be done, but difficulty has sometimes arisen in connection with the planting of trees to beautify the common. Planting of large numbers of trees, over a space sufficient to encroach materially on the commoners' grazing or other rights, is not permitted by the law without an inclosure award, or the Minister's consent under the Law of Commons Amendment Act, 1893.

16. The metropolitan commons are governed by a separate code which, in effect, prohibits all forms of inclosure absolutely. The effect of Section 5 of the Metropolitan Commons Act, 1866, is that the erection of buildings and (except under a regulation scheme) construction of works for amenity purposes cannot take place, as the Ministry is advised that it constitutes inclosure. For example, a proposal to erect a sports pavilion on a metropolitan common would fail for this reason.

The National Interest in the Use of Land

17. As the law stands at present, common land is in a special class and common rights receive a higher degree of protection than other rights in the ownership or possession of land. In consequence, the position has been reached where it is simpler and easier for the holding which provides a farmer with his principal means of livelihood to be compulsorily acquired by a public authority for purposes such as agricultural improvement, afforestation or development, than to dispossess him of his far less valuable rights over a common for the same purposes.

18. Public authorities have the power to acquire common land, like other land, the procedure being laid down in the Acquisition of Land (Authorisation Procedure) Act, 1946. Acquisition of common land is, however, subject to special Parliamentary procedure. If the authority wishes to avoid recourse to this procedure, it must provide an equally advantageous area of common land in lieu; and this is not an easy thing to do. As either of these courses is liable to involve considerable extra expense, and might fail altogether, public authorities have a strong motive for avoiding the use of common land, where freehold land is available instead. This may be, and often is, good agricultural land.

19. The difficulties in the way of a purchase of common land by agreement, with the object of developing the land or otherwise changing its use for the advantage of the nation, are still more formidable, whether the purchase is made by a public authority or by a private person operating with planning permission. While the purchase itself is a straightforward matter, the land must be sold subject to the common rights, and extinguishment of the common rights by agreement is subject to the difficulties mentioned earlier (paragraph 6) in connection with the commoners' own interests.

20. Private housing development in these circumstances is virtually impossible; the Minister would normally be unable to establish any 'benefit to the neighbourhood' under Section 194 of the Law of Property Act, 1925, and would be obliged to withhold consent to the erection of the buildings. In the case of industrial development or public development such as the provision of schools, hospitals or local authority housing estates, a benefit to the neighbourhood is relatively less difficult to establish, but the Minister is advised that this could not be upheld as a ground for allowing more than a small part of the area of a common to be developed, because Section 194 of the Law of Property Act, 1925, did not envisage the sterilization of the whole or a major part of a common for such purposes.

21. It is often urged that there are extensive areas of common land accessible to urban areas which have become derelict and overgrown with scrub, and are unlikely to be worth the expense of reclamation for agriculture, forestry or open spaces, but which would be suitable for development. This raises the question whether, against the background of the present planning law, under which all changes in the use of land are closely supervised, there is still a case for segregating common land in a special class and requiring a special procedure for each individual proposal in relation to it to be scrutinised by Parliament, which cannot be invoked on behalf of agricultural land generally or on behalf of other rights in land and property.

Agriculture

22. The difficulties in the way of agricultural improvement derive mainly from the restrictions on breaking the surface soil, fencing, the erection of buildings and construction of works on a common except 'for the benefit of the neighbourhood'. As has already been explained, as a rule only an inclosure under statute can remove these restrictions; and action in other ways depends on the unanimous agreement of the commoners.

23. This is perhaps most evident in relation to the improvement of common grazings, of which the acreage provided by commons is still very considerable.

24. Because of the impediments to the fencing of commons, practically nothing can be done to improve or maintain the grassland. The provisions requiring the consent of the Minister to the erection of fences and buildings which prevent or impede access to be given only 'for the benefit of the neighbourhood' in the special sense of benefit to neighbouring populous places make it almost always impossible for him to consent to the use of fences to surround or partition the commons in order to prevent straying or enable them to be grazed in rotation to preserve the grassland.

25. It is thought that in certain circumstances, e.g. where the object is conversion to arable, ploughing of common land is a form of encroachment and may therefore be illegal. Whether that is so or not, it is fairly clear that ploughing could take place only on a common to which there is no right of access, and even in that case only with the agreement of all the commoners, and that a single objector could probably get an objection upheld by the Courts. Moreover the risk of damage to unfenced arable crops is considerable. In consequence, ploughing and reseedling with better strains of grass can rarely take place in practice, and further, the Exchequer grants that are available for ploughing up certain types of grassland cannot be paid for ploughing up common land where this is intrinsically desirable. Breaking the surface of the soil, as part of the process of reclaiming common land which has reverted to scrub, is subject to the same inhibitions.

26. It has been found that even where the Government is prepared to offer financial assistance for improvement, e.g. under the Hill Farming and Livestock Rearing Acts and the Marginal Production Scheme, the restrictions prevent would-be beneficiaries from taking it up. It is often beyond the power of one person to trace all the commoners and secure their agreement. Under the Hill Farming Acts it is possible in certain classes of case to work on the basis of a majority, but even where this can be done, the problem of persuading a sufficient number of commoners to make their own financial contribution is too great. Sometimes the fear that land may be common, though the common rights may no longer be used, has deterred persons anxious to improve derelict land from doing so.

27. Within limits, it is open to the commoners to manage the grazing by voluntary agreement, putting on the common a specified number of animals and so preventing over—and under—grazing. Several attempts have been made in recent years to work such a plan, but they have usually broken down either because they depend on the unanimous agreement of the commoners and there is no way of imposing the will of the majority on the minority—perhaps only of one—who will not comply, or because, without fencing, strangers who do not legally share the commons rights often cannot in practice be prevented from putting their stock on the land.

28. The head of stock which an individual commoner may lawfully turn out on the common is limited (see paragraph 26 of the first memorandum). But the doctrine of levancy and couchancy, which in theory provides the means of enforcement, and which if it worked would serve to prevent over-stocking, is inapplicable in present conditions, when a holding improved by modern techniques can support a very large head of stock.

29. Much common land has reverted owing to under-stocking, for which there is no traditional remedy, and two important reasons for this are the fear of loss of stock due to straying on the highway, which is now more dangerous owing to motor traffic, and the growth of the attested herds scheme, which entails a measure of isolation of the herd (see paragraphs 31 and 32 below). For both of these, the only remedy is more fencing.

30. *Disease Control.* The absence of facilities for confining and segregating stock makes it difficult to control animal diseases. In foot and mouth disease outbreaks it is hard to catch and restrain the animals, to discover who owns them and to confine the animals in temporary accommodation until they are valued and slaughtered.

31. Of particular interest in this connection is the attested herds scheme, a voluntary scheme for eradicating tuberculosis in cattle. It is the policy to establish tuberculosis-free areas, which will, it is hoped, eventually cover the whole country. An owner who wishes to establish an attested herd is required to keep the herd out of contact with non-attested stock, and to dispose of animals in his herd

which react to the tuberculin tests ('reactors'). The first of these requirements cannot be met if he uses common grazing to which non-attested herds have access. It has often been found impossible to persuade all the users of a common grazing to take steps to have their cattle attested at the same time, and one unco-operative owner may prevent the other commoners from having their herds attested.

32. Certain areas have already been declared as tuberculosis 'eradication' and 'attested' areas. In due course other areas will be similarly defined. The slaughter of reactors in these areas is compulsory. The existence of a common grazing may complicate the application of the procedure because herds which have reactors to the tuberculin test must be placed under statutory restrictions and segregated from other cattle. If a common grazing is used, this cannot always be arranged; and the whole stock on the grazing may have to be regarded as one herd.

33. Similar considerations would apply to the eradication of other diseases on a herd or flock basis. The essence of the difficulty is the lack of fencing.

34. *Pest Control.* Farmers near commons have always found difficulty in keeping down the number of rabbits on their land because of the re-infestation from common land, particularly where the common is scrub land. Myxomatosis has destroyed most of the wild rabbits in the country and every effort is being made to eliminate those that have escaped or survived the disease. Rabbit clearance areas are being designated under Section 1 of the Pests Act, 1954, in which it will be the duty of the occupier to destroy wild rabbits living on or resorting to his land. Well over half of England and Wales has been so designated and, as the endeavours of occupiers to keep their lands free of rabbits might be frustrated by reinfestation from adjoining common lands, county agricultural executive committees have been authorised to undertake rabbit control measures on commons at public expense. If some means could be found of rehabilitating commons, particularly those covered with scrub, this charge to public funds might be saved.

35. *Land Drainage and Water Supply.* The Ministry grant-aids the improvement of arterial drainage, field drainage and farm water supply. Work on a common which benefits a particular farm or farmers is not necessarily 'of benefit to the neighbourhood' and such benefit must be shown before the Minister can consent to the construction of works, which includes the digging of ditches and the laying of pipes. It is sometimes useless to improve the drainage of a piece of private land unless at the same time common land nearby can be effectively drained and the system maintained. There is no restriction on the cleaning out of existing ditches; but there would probably be a restriction on their widening. Again, with water supply, in order to provide a particular holding with water it is sometimes necessary to take the supply across a piece of common land. Several schemes have had to be dropped because of the difficulty in obtaining consent to construct the necessary work on a common. The restriction would probably apply to the erection of a water trough on common land as well as to the digging of ditches and the laying of pipes.

36. These cases usually relate to field drainage or farm water supply schemes, directly assisted by the Ministry; but occasionally a county council has run into difficulty when trying to promote a voluntary arterial drainage scheme and applying for grant-aid from the Minister under Section 15 of the Agriculture Act, 1937. The difficulty is mainly due to the restrictions on the erection of fences to protect the ditches; and to the problem of defraying the cost of maintenance when not all the commoners are willing to contribute.

Afforestation

37. It is frequently stated that there are large tracts of common land, particularly in the upland areas of Wales and the North Country, which are not used to any material extent and which could with advantage be afforested either in whole or in part. It has been suggested that total afforestation by the State could take place where the common rights are not used, or only used to a negligible degree; and that over and above the immediate purpose of adding to national timber resources, this would enable some rural commons to which there is no right of access to be opened to the public, since it is the policy of the Forestry Commission to throw State forests open to the public, subject to safeguards against fire and other damage, and to provide pathways and other facilities. Partial afforestation would be the more

appropriate course where the common rights were used, since in many cases this might bring direct advantage to the commoners by providing shelter belts which would benefit not only the common land itself but the commoners' own holdings.

38. Both these courses are difficult under the present law. Compulsory purchase, with extinguishment of common rights, is subject to the general difficulty created by the special Parliamentary procedure. Purchase by agreement, followed by afforestation, is technically an inclosure, and can take place only with the consent (under the Law of Commons Amendment Act, 1893) of the Minister, who must however apply the usual test of 'benefit to the neighbourhood'. This holds good even where the desire to promote afforestation originates with the commoners themselves and is intended to improve the agricultural use of the common for the commoners' own purposes.

Ministry of Agriculture, Fisheries and Food,

20th February, 1956.

Examination of Witnesses

*SIR ALAN HITCHMAN, K.C.B.	...	<i>Permanent Secretary</i>
MR. A. R. MANKTELOW, C.B.	...	<i>Deputy Secretary</i>
MR. B. C. ENGHOLM	...	<i>Under Secretary</i>
†MR. J. A. K. CHRISTIE	...	<i>Assistant Secretary</i>
†MR. N. H. BREWIS	...	<i>Assistant Solicitor</i>
†MR. L. D. G. RICHINGS	...	<i>Principal</i>

On behalf of the Ministry of Agriculture, Fisheries and Food

Called and Examined

1. *Chairman:* We have the representatives of the Ministry of Agriculture, Fisheries and Food here led by Sir Alan Hitchman, the Permanent Secretary to the Ministry. Possibly, Sir Alan, you would introduce your two colleagues?

—*Sir Alan Hitchman:* Mr. Manktelow, one of the Deputy Secretaries, is on my right. Mr. Engholm on my left is the Under Secretary in whose group of divisions the work relating to commons is dealt with in the Ministry.

2. Thank you very much for coming, and for supplying us with these lengthy memoranda which we have done our best to study. Is there any general statement, Sir Alan, that you would like to make now?—I think that is probably the way that I myself can give such help as I am able to afford. I think—in fact I am quite sure—that the first thing I should say is that I myself do not for one moment claim to be anything of an expert on commons. As you have probably already discovered from the memoranda that we have put in, the law on commons is extremely com-

plicated in detail, and when it gets to any questions of detail you will have to ask my colleagues, and in particular those appearing before you later on.

I thought I might perhaps give some general appreciation of some of the principal problems, in the hope that this would be a general framework which would be of help to you in your subsequent consideration. I have not, of course, come with any cut and dried proposals because that is not at all my business. All I want to do is to try and expose some of the main problems as they seem to us. Obviously they have got to be approached with a very open mind. With that introduction may I say that it seems to us that the present law governing commons is essentially a creation of the second half of the nineteenth century. Historically the development of the law of common land from the Middle Ages onwards down to the first half of the nineteenth century was in the direction of making inclosure easier in the interests of a more efficient agriculture. That was the prime motive

* Morning Session only.

† Afternoon Session only.

of the changes that were made in the law of commons in those centuries up to that date, and the feelings dominant in those times, and intensified towards the end of the eighteenth century, were in favour of action to get rid of the restrictions on the use of common land. That was because—particularly at the end of the eighteenth century—they prevented the extensive use of the new agricultural techniques which were being introduced, and impeded the more productive use of the land. It was, particularly towards the end of the eighteenth century, a time when corn was dear and the population was increasing rapidly. There was therefore great attention given to that particular problem of the improvement of agriculture and the position of commons fell within that general movement. The final expression of that historical trend was in the General Inclosure Act of 1845 which was the culmination of a series of Acts to make inclosure cheaper and easier. But quite soon after that Act was passed there came a reaction of feeling. Imports of food, corn and so on, began to be easier, and the towns continued to develop. First of all in 1866 the metropolitan commons were brought under special legislation and then, ten years later in 1876, all common land became the subject of legislation designed to make further inclosure difficult, and introducing in place of the inclosure of commons the regulation of commons as a procedure—partly with the object of enabling the commoners to benefit agriculturally within the framework of the old common right system, but, more important, in order to preserve some commons as open spaces for the recreation of the local townspeople. In 1876 the conservators of regulated commons were given powers to improve the commons and to add to their amenity attractions. Later, in 1899, local authorities were enabled to take similar powers. And then in 1925 the Law of Property Act threw all the urban commons open to the public, although it was provided that the Minister of Agriculture's consent had to be obtained for the making of minor improvements which were technically inclosures, and the improvements had to be primarily for the benefit of the neighbourhood and not solely for agriculture and other economic purposes.

Summing up, therefore, from the middle of the nineteenth century up to now, in effect it can be said as a general proposition that all legislation affecting

commons has been drawn in such a way as to preserve the special status of commons intact and, as far as possible, to maintain that status. There has been a strong presumption against change, and the qualification that changes must be for the benefit of the neighbourhood has been the principal governing consideration.

That is a very cursory summary of the history as we see it of commons legislation, and against that background I think that there are perhaps two main problems which your Commission, Sir, may wish to consider. The first of these is the extent to which the legislation passed since the middle of the nineteenth century, which now governs the position of commons, has in fact been effective for the purpose that was in view; whether, given the intentions of the legislators who passed those laws that I have referred to, those laws have worked effectively to implement those intentions in the best way. And then I think there is a second main problem, and that is whether those objectives 'of commons legislation which has been passed since the middle of the last century are still sound objectives in the circumstances of today; whether changes have occurred since that legislation came into force, changes of all kinds, social, economic and in agricultural science, which would lead to any new objectives being established as in the public interest and with consequent changes in the law.

Having indicated as it seems to us, perhaps, the two main problems, could I go on to develop points on them just a little? Taking first of all the question of the effectiveness of commons legislation for the purposes that it had in view, those purposes were twofold. They were, naturally and obviously, the preservation of common rights and, secondly, the preservation of much common land for the benefit of the general public for, in effect, general recreation, or as I think one of the Acts actually says for 'air and exercise'. In considering how the legislation has operated the point that I would, I think, wish to make is that the legislation, as it now is, laid down a very rigid system for the attainment of these objectives. In broad terms it tried to freeze the status quo of the commons and prevent any action which might conceivably be held to interfere with the rights of the commoners or, in appropriate cases, with access by the public

Now I do not at all want to suggest that that rigidity was wrong. That, I think, is one of the points which obviously you will have to consider, but I do want to bring out that it does seem to us the effect of the legislation was to produce this very rigid system of control. One of the effects of that rigidity is that it does seem to occur that commoners generally find it so difficult as to be impossible to take advantage of modern agricultural practices for improving or maintaining their commons in reasonable productivity and getting the fullest advantage in the modern world out of their common rights. I would like if I may to give one or two examples. One is that, as is generally known, the basic technique of grassland management that has been worked out in recent years involves the control of grazing. I think agricultural scientists all agree that this is the essential feature for getting the most out of grass in modern conditions. It is also generally accepted that permanent pasture is often not the best way of making the most of land that is in grass. Often a more productive system is to plough up the land periodically and have what are called temporary leys. In this way very considerable improvements in productivity can be obtained. But to do that effectively means fencing, it could possibly mean drainage, and certainly does mean a systematic control of stock. Certainly we would think it is not an exaggeration to say that on most commons most of these things are in fact not possible to achieve.

Another example of the same kind of the way this rigidity might be held to be a matter of difficulty applies particularly in the case of upland commons, for example, the commons on the hills in Wales and the north of England. Very frequently one essential way of improving the grazing and helping the stock is to plant what are called shelter belts—that is belts of trees properly sited so that the stock are protected and can be found more readily in bad weather and so on. It is often considered that that kind of afforestation, as well as benefiting agriculture, is in itself a good development of the countryside from the forestry point of view. But the planting of trees on commons for shelter or for timber production is broadly prevented under existing legislation. Even if the fullest advantage could not be taken of agricultural science, it might still be possible for

commoners by agreement to club together and, for example, to agree to control grazing and possibly provide fertilizer and so on. In one or two cases that has been done, but it does require that the commoners should all be known and that there should not be too many of them. I think we find that the number should be relatively few, because a purely voluntary arrangement of that kind breaks down if there is a minority who refuse to co-operate, and will not accept the restriction on their rights which that kind of system implies, or if encroachment by strangers cannot be prevented. Either kind of difficulty stands in the way of even a voluntary arrangement to make the most of development in agriculture.

There is another development which I think falls into this context. Commons are, of course, a relic of the old manorial system, and when that manorial system was in full operation, there were the manorial courts which could and very frequently did exercise quite an effective control over the commons. Now we find that the Law of Property Act, 1922, which abolished copyhold, has had the effect of causing the manorial courts in the majority of cases to wither, and that means that there is no longer any effective body within the law which can exercise control in a simple way over the activities on common land for the benefit of the commoners themselves.

There is another example, I think, of a broad kind which indicates how changes in social conditions might be considered to have left commons legislation perhaps a little behind. The development of motor transport has made quite a radical difference in many cases to the use that can be made of commons. With so much motor traffic on some roads, either passing through or by commons which are unfenced and where the stock on them tend to stray on to the roads, the dangers to the stock are such that the commons have become useless for grazing because the fencing which would be necessary to restrict the stock is difficult to achieve within the existing legislation and is also expensive. And so in a number of cases the common rights have fallen into disuse and the land has become derelict, and sometimes it is really not usefully available for any purpose—even amenity purpose.

You may be surprised that the present state of the law seems to require such a state of affairs. It arises from the requirement that any inclosure should be for the benefit of the neighbourhood, which is a requirement of the late-nineteenth century legislation. In fact in some cases the Minister probably could authorise the erection of a fence; but he would have to be guided not by considering—or at any rate not being primarily determined by—the fact that the fence would be of benefit to the commoners, but by taking into account such considerations as whether the straying stock were likely to be such a danger to the passengers in the vehicles on the roads, in other words that the fencing could be considered to be something for the benefit of the neighbourhood.

I have been dealing hitherto with difficulties as we see them in the state of the present law primarily from the point of view of how the interests of the commoners are or might be considered to be damaged, but there is of course the other main objective in the legislation—the preservation of common land for air and exercise purposes. There have been arrangements for the promotion of regulation schemes in an urban or metropolitan district, but commons if they are to be of real benefit,—of the optimum benefit—even from the recreational point of view, need to be properly managed and looked after. Otherwise they tend to become a mass of gorse and bracken, and although this is pleasing to some people the consequence in some cases is that only a fringe of the common is in fact accessible, even for the purpose of air and exercise. One reason for that is that in many cases there is no authority carrying out the job of management, and we think that local authorities are often reluctant to promote regulation schemes because it would involve them in the expense of maintaining the common from the amenity point of view. It might be that there are cases in which there could be improvement of the commons for the benefit of the commoners which would be less expensive than maintaining the common solely for its amenity purpose, and yet the amenity values would be also increased. So for the kind of reason which I have sketched in very broadly, I think you will see that there are very many possible combinations of circumstances but we think that you may well

find, as I began by saying, that you will want to consider whether, with the passage of time, with the social and economic changes and changes in agricultural science, the existing law is the best instrument for accomplishing the objective that inspired it.

That leads me to what I have suggested might be your second main problem, and that is whether the objectives that inspire the existing law are sound in today's circumstances. As I said, the way in which—in broad terms—the legislators in the nineteenth century acted was to impose a very rigid system so as to make inclosures much more difficult. That was their basic principle, and in that way they considered that they would preserve the rights of the commoners and the customary rights of the public so far as they existed for air, exercise and access. One effect of the existing law, and I am not at all suggesting that it is a wrong effect is that the holder of common rights probably has considerably greater protection than the holders of other interests in land, in particular the freeholder; because, for instance, the procedures for extinguishing in the public interest common rights or rights of public access are, under the present law, considerably more difficult and expensive than the modern procedures for extinguishing in the public interest an interest in a freehold. Possibly that may be quite right, but I suggest that it is a matter which might well be considered, more particularly as with the changes of the times, the further spread of the towns and increase in the population, there has been a growing pressure on land for all sorts of purposes and an increasing awareness of the need to make the most of land. It is felt increasingly to be a scarce commodity for which there is great competition, and with the growth of this public opinion there has of course grown up a very elaborate system of town and country planning legislation, the whole object of which is to control the use of land. Any proposal to use a piece of land for a new purpose under that legislation requires the approval of the local planning authority or the agreement of the central Government, according to the type of case, and procedure has been set up, to which much time and thought have been given, to ensure that the private interests are properly protected and that proper weight is given to the public interest, while nevertheless having a reasonably flexible procedure for approving or disapproving changes in

use. In the case of commons, however, we have about a million and a half acres in England and Wales—which is about 4 per cent. of the total acreage—of which changes in use sometimes have to have the consent of Parliament itself. Even if the commoners all agree to sell their rights to the owner of the soil, the approval of the county council and of the Minister is still necessary. The effect of that is that for all practical purposes the consideration of common land for some other use is practically ruled out. If, for example, a road is being planned and the best line of route which, again for example, would do the least harm from the point of view of the use of agricultural land, lies over a common, then all these special procedures come in which do not come in if the road has to go over ordinary freehold land; and very possibly it is quite natural that in those circumstances something of the line of least resistance from the legal point of view is followed, not necessarily to the best public interest. We would suggest therefore that the existing procedures should be considered from the point of view of their relevance to all the new legislation which has grown up in the last fifteen to twenty years for controlling the use of land generally.

The same kind of point arises, to give another example, in the case of afforestation. It may well be the best use of land in modern circumstances in the right areas, and there are of course wide areas of common land in the upland areas which, *prima facie*, are very suitable for afforestation, but it is very difficult if not virtually impossible in present circumstances to extinguish common rights in order to facilitate afforestation. If the Forestry Commission buy the soil of a common, they can only buy it subject to the common rights. The common rights are preserved, and the Forestry Commission would then have to go through the procedure of extinguishing the rights and freeing the land. They could proceed by compulsory purchase, but in fact they do not as a matter of policy use their compulsory purchase powers save in very exceptional circumstances, and the result is that much land which might well be best used for afforestation with full regard to proper compensation for the rights of the commoners in fact cannot be so used.

I think, Mr. Chairman, that really is all I would wish to say by way of a general statement. I have tried to bring

out the historical process which has led to the present position. I have suggested that there are broadly two main problems: whether the existing legislation best serves the objectives which the legislators had in mind in the past and, secondly, whether, given the changes which have occurred since the last principal commons legislation, there should conceivably be any change in the objectives, leading, of course, to some change in the legislation governing commons. I have given one or two broad examples of why we think those are the problems, and I hope that will be of some help.

3. *Chairman*: Thank you very much. I did not ask you a question at the outset which perhaps I should have put. Does the Ministry object to the printing and publication of these two memoranda, because we are proposing to publish the evidence given before us in public, and we thought it might be useful to have the memoranda published with the evidence.—Certainly.

4. We are very grateful for your general statement. I would like, if I may, to ask a few questions arising out of it. First of all with regard to the history, you mentioned that the effect of the legislation of the nineteenth century was virtually to freeze the system as it existed about a hundred years ago. Is that a correct summary?—Yes.

5. You did not tell us however why it got frozen. I wonder if you could tell us that?—*Mr. Engholm*: I think the position was this: there was a change in the middle of the nineteenth century which led the legislators from that time to feel that the right thing to do in order to protect the interests concerned—it was first of all the interests of the commoners that they were thinking of, then later on the interests of the general public from the point of view of public access—was to deal with the remaining common land in the country en bloc, by legislation and broadly say that any further encroachment on that common land should be made as difficult as possible. It was with the objective of protecting the commoners' interests and protecting the rights of the general public that it arose.—*Sir Alan Hitchman*: I would say first of all it arises from the very rigid procedure that was laid down and perhaps the operation of this phrase 'for the benefit of the neighbourhood', which has itself turned out to be extremely restrictive.

6. Is it due to the fact that during the eighteenth century it was felt that the individual—the small tenant, the small farmer—was being very much oppressed by the inclosure legislation that was being passed by Parliament?—I have no doubt that was a great factor in it.

7. So that inclosure became a sort of undesirable thing. Even now, those who read history tend to regard inclosures as being something nasty?—Yes, everyone's hackles go up as soon as the thought of inclosure occurs, and I think as it was considered objectionable—the social consequences to the commoners of the inclosures leading to that feeling—the feeling was probably reinforced by regard for the growing urban population and the fears that commons would not be preserved for the purposes of air and exercise. I think the two emotions rather coagulated to produce the effect.

8. *Mrs. Paton*: Was it the effect of public agitation about the denial of commons to people?—I have not in my mind the nature of the public agitation, but undoubtedly a strong public opinion did arise of that character.

9. *Mr. Arnold-Baker*: Was it also perhaps the consequence of the steady fall in the price of corn after 1834?—The economic incentive on the part of the landlord to secure inclosure was undoubtedly very much diminished.

10. *Chairman*: Perhaps it was because of the importation of foreign corn?—And the opening up of the prairies later.

11. *Professor Dudley Stamp*: You have indicated the general trend of the historical legislation, but could you say a little about the emergency powers which were exercised during the war, and which I believe have now lapsed, under which commons were used?—

Mr. Manktelow: Under Defence Regulations, which in fact are still in existence though the time of their abolition is approaching, the Minister had general powers to take possession of land in the interests of food production. Those powers were pretty extensively used, and included amongst the land of which the Minister took possession was common land. I think about 20,000-odd acres of common land were in fact taken into possession and used for food production under the aegis of the agricultural executive committees of the counties.—*Sir Alan Hitchman*: Normally with the tacit concurrence of the commoners.

12. I have it in mind that those powers lapsed, and that much land was given up on the 31st December last. Am I right about that?—*Mr. Manktelow*: It is a fact that the vast majority of these common lands have been released from requisition. The power to retain the land under requisition still exists. The particular regulation under which this operation was done is still in existence, but in fact the bulk of the common lands that were requisitioned have been returned.—*Sir Alan Hitchman*: And of course it is the intention quite soon for the power altogether to disappear, and that is one reason why we are releasing the land.

13. But we are right in believing that quite considerable tracts of common land which were improved at public expense during the war are to be handed back, and the benefit of that expenditure is being lost?—Yes.—*Mr. Manktelow*: But some of the land is being purchased under powers in the 1947 Agriculture Act. Some 3,000-odd acres out of the 20,000 are being purchased. They were the particularly valuable commons from the point of view of food production, and also the cases where the commoners were, generally speaking, agreeable to their rights being extinguished.—*Mr. Engholm*: Perhaps I could just add this too: that wherever possible we are trying to arrange with the commoners that they should form some sort of management scheme for the proper use of the grazing rights after the common has been derequisitioned. It is not always easy, but we are doing our best to arrange for management schemes of that kind before the land is derequisitioned.—*Sir Alan Hitchman*: And those arrangements have to be voluntary, of course.

14. It is true that if one single commoner stands out, all those arrangements fall to the ground?—Yes.

15. *Mrs. Paton*: And the land might become derelict?—Yes.

16. *Sir George Pepler*: Does that only relate to grazing?—*Mr. Manktelow*: Crops were grown on this common land, and quite good ones.

17. Would you get a voluntary scheme to maintain cropping?—*Mr. Engholm*: That would be contrary to the law of commons. It would not be possible as the law stands to have the ploughing up of land and the growing of crops. It would be contrary to the

exercise of common rights, and if any one commoner objected, it would fall to the ground.

18. If one commoner objected to grazing would it equally fall through?—The difference is there are no common rights which involve the ploughing of land and the growing of crops, whereas grassland is for the exercise of the common grazing rights.

19. *Professor Alun Roberts*: Would it be right to say that the experience of the Ministry of the 20,000 acres that were under the plough during the war reveals a potential for production, and that agriculturally it was very regrettable that cultivation had to lapse under the existing legislation?—*Sir Alan Hitchman*: I think I could say that.

20. *Chairman*: I presume this afternoon or tomorrow someone will tell us the experience with regard to these 20,000 acres?—Yes, Mr. Engholm will be attending this afternoon, or we could let you have a memorandum.

21. There is another point arising out of the explanation you gave us, Sir Alan, and that is the introduction in the nineteenth century of the concept of 'for the benefit of the neighbourhood'. Before then was it simply a question between the landowner and the owner of the common right?—I understand that was so. I think the concept began to appear first in the 1845 Act which in a sense was the apogee of what most of us think of as the landlord versus commoner controversies. That concept did appear then although it did not have great weight; but by the 1876 Act it had become the overriding principle.

22. And 'the benefit of the neighbourhood' in those days was restricted to people in the neighbourhood?—Yes.

23. Whereas now anybody can travel 100 miles or so to enjoy air and exercise on the common, so that the situation in that respect too has completely changed?—Yes. What is the neighbourhood is quite a problem.

24. *Mrs. Paton*: Was there no specific definition in the Act as to what was meant by 'neighbourhood'?—Not a complete one.

25. *Sir George Pepler*: I take it even in the 'benefit of the neighbourhood' phrase earlier on, there was no idea of recreation? What was exercised then were the rights of commoners to graze, and timber, and things like that?—*Mr.*

Engholm: Not in that phrase, 'the benefit of the neighbourhood'. In the 1876 Act there are laid down a number of things which are regarded as for the benefit of the neighbourhood. They are the things like making a local road or something of that sort. 'The benefit of the neighbourhood' phrase was intended to be something different from the interests of the commoners themselves. It was something quite apart from that.

26. The commoners are not supposed to want to use the common for recreation, the original common?—No.

27. *Mr. Floyd*: Would it be right to say that if the commons were effectively grazed the right of air and exercise could be much more effectively used? The lack of grazing has allowed gorse and bracken to grow up?—*Sir Alan Hitchman*: In many cases that is so.

28. And unless these grazing rights are used, the air and exercise will be lost?—Either be lost or have to be maintained very expensively.

29. And the cheapest way of keeping the bracken and the thorn and other things down is in fact the grazing animal? Why was it that although these commons were grazed more heavily in the old days commoners seem to value their rights less in recent times, and therefore keep less stock? I think you mention the introduction of the motor cars which made fences and, I would think also, gates more important, because the horse-drawn vehicle on the road was not such a serious menace. It would be useful if you could tell us something of the difficulties arising from tuberculosis and other diseases when stock from different holdings are mixed on common grazing?—*Mr. Engholm*: I think the point you have in mind, Sir, is the development of the legislation for freeing the cattle herds of the country from tuberculosis which involves the declaration of eradication areas which are free of cattle suffering from the disease. Very naturally if that sort of thing is going to be done it is very much more difficult where you have a common where the cattle from a number of farms are mixed up. There is no segregation as between the herds of the different farms, and any particular farm that wanted to qualify for attestation would not be able to do so if its cattle were being mixed with the cattle of other farms round about which were not attested. I think that is probably the difficulty you have in

mind from the animal health point of view.

30. Might that be one reason why some holders of rights which are held together have in fact ceased to exercise them?—That may be so.

31. *Professor Dudley Stamp*: Would the Ministry care to link that with a rather similar point: namely is there evidence that owing to the lack of use or lack of regulation of commons there is a possible infestation of neighbouring farmland with noxious weeds?—*Sir Alan Hitchman*: I should think that is very possible. It is also, of course, very likely that there is infestation of neighbouring farms with noxious rabbits.

32. Exactly. The rabbits question, I think, was mentioned in the evidence. I had in mind particularly weeds.—Yes, ragwort and the like.

33. Elsewhere than common land the Ministry has power to deal with an owner who does not control his weeds, but not in the case of commons?—No. The power is there, but it is a question of application, for example, who is the occupier.

34. *Mr. Floyd*: Under the old manorial system there was the lord of the manor who exercised considerable control and probably had considerable financial resources behind him. Since the Law of Property Act, which you mentioned, has done away with the copyholds, the lord of the manor's financial interest has largely lapsed, and is not the real difficulty behind any scheme for regulating the commons lack of constructive finance? If it is a question of putting up a water supply on the common it is very difficult to get the commoners to subscribe to it, although individually they would like the benefit of it. If it is a question of benefit to beasts on the neighbour's farm, who is going to pay? If it is a question of drainage of common land, who is to pay for the digging of the drain and the pipes? Would you feel that when the lord of the manor gradually faded away from our social system, some form of finance might have been provided to give that backing to schemes which the commoners themselves might desire, but which they found it very difficult to agree on any basis for subscribing to?—I think, if I may say so, Sir, that is an excellent point.

35. *Chairman*: May I put just one more question before Sir Alan leaves us, as he will not be here this afternoon.

Do you think it is going to be possible for us to divide commons into two effective groups, those which are primarily intended—I should say perhaps used rather than intended—for amenity purposes, and those primarily used for agricultural purposes?—Yes. I would suggest that you pursue that with my colleagues this afternoon. I think I would say, so far as I have thought about this, mine probably is the same classification that you have in mind. I think that probably it is, so to speak, the status of the commons from the point of view of what in fact can be done about them that is the determining consideration, and above all the right of access, air and exercise and so on. If there is in the case of a common a right of public access, then I would myself think that in broad terms different considerations tend to arise than if it is a purely private common. Perhaps I may be saying exactly the same thing as you have been saying, Mr. Chairman, but with perhaps a slight refinement.

36. I was putting that question in order to put the next one which arises out of your historical survey. That is that it seems to me that by accident the Ministry of Agriculture has become responsible for a considerable number of what really have become open spaces, whereas normally these things are dealt with by the Ministry of Housing and Local Government. I was wondering if you could, off-hand, give an answer to the question whether, if we can make this division, it might not be desirable for the second group, the amenity group, to be handed over to be under the control of Housing and Local Government rather than Agriculture, Fisheries and Food?—I would say first of all certainly that should be considered. I would think it very right that you should consider that. There are two considerations which I think, when you come to examine it in detail, you may find give rise to difficulty, although I do not want to prejudice the point at all. One is, I would think, that it is probably a minority of commons that are susceptible to that very clear-cut division. In a great many cases by reason of the need to maintain amenity economically, I suspect that both grazing and amenity will be found to occur, although there are commons where their sole use is amenity and never will be anything else. The other thing is, but this I would only put in your minds and I do not want to stress it at all at this

stage, that, as I am sure you have already appreciated, the administration of commons law certainly at present is really a pretty abstruse and expert business. If you can make recommendations which sweep away those complexities and Ministers accept them, when they are brought into force that would be fine, but if anything like the present system maintains, I would think it might be found that there was at any rate some administrative advantage in having the inevitably quite few people who have to deal with these cases in one organisation, just so that you have one place and not two where this expertise could be economically maintained. That obviously would not override very clear issues of policy, and I only want just to make the point; and I repeat I certainly agree the point should be considered because I can well understand the principle.

Chairman: Thank you very much. The Commission will adjourn now until 2.30, when it will continue to hear evidence from the Ministry of Agriculture.

(The proceedings were adjourned accordingly.)

37. *Chairman:* Good afternoon, Gentlemen. What I suggest we do is to go rather rapidly through the Ministry's second memorandum and then, if members of the Commission have questions to ask, they can probably hitch them on to the appropriate paragraphs in the memorandum.—*Mr. Manktelow:* Yes.

38. There may be other questions after we have glanced rather rapidly through the memorandum. I think your first group of sections—paragraphs 1 and 2—are merely introductory. Then we come to a group of paragraphs dealing with the interests of the commoners. Those are paragraphs 3 to 10. In paragraph 3 you mention that in the rearguard action against inclosure, the possibility that the commoners themselves might benefit by suitable provisions for improvement appears not to have been taken into account. That was one of the points that the Permanent Secretary made this morning, I think, was it not?—Yes, Sir.

39. Next let us take the paragraphs to paragraph 7. That paragraph states that the procedure for a statutory inclosure award laid down in the Commons Act, 1876, as amended, is involved and

almost unworkable. I wonder if you could tell us, in rough outline, what that procedure is?—*Mr. Engholm:* The procedure under the 1876 Act is the provisional order procedure.

40. That still remains?—Yes, it has not been amended. The special Parliamentary procedure has not been applied as has been done in the case of a number of other Acts on other subjects where the old provisional order procedure used to apply.

41. I wonder if I might break in there and say that probably it would help if, right at the outset, we could be told roughly what provisional order procedure is and what special Parliamentary procedure is. Then there is a third procedure, if I remember rightly, which is used, for example, for an ordinary compulsory purchase order. Could you just give us an outline of what the differences are?—Yes. The provisional order procedure is, very broadly, this: that the Minister concerned, first of all has to satisfy himself that the order—in this particular case it would be an order for inclosure—is expedient, and he has to do that by means of seeing whether there are any objections and, if necessary, holding a local inquiry into those objections. Then, if he is satisfied that an order ought to be made, he puts that order to Parliament. It is attached to a Bill and it then follows in Parliament, broadly, the Private Bill procedure, which means that it has to be examined by a committee in each House and that there is an opportunity for petitions against the order attached to the Bill. If there are petitions, they have to be argued out, usually by means of counsel, in front of the committee in each House, and the committee concerned has to consider whether or not the order or Bill should be amended, or whether it should be rejected altogether, and, if it has to be amended, in what particulars. It is the responsibility in those cases of the applicants for the provisional order to steer the Bill or the order through the Private Bill procedure and to defend the Bill. The onus is on them.

The special Parliamentary procedure was introduced in 1945 because the provisional order procedure was not only very time-consuming in the sense that it had to fulfil a timetable laid down by standing orders in Parliament but it also was very expensive because if there were objections and petitions it involved hiring

counsel, paying their fees, getting witnesses, employing Parliamentary agents and all the rest of it. So in 1945 a new procedure was introduced called the special Parliamentary procedure, and that, in the first stages, follows very much the same line as the provisional order procedure. The Minister concerned has got to satisfy himself that the order is one which it is expedient to make, and to do that he has to hold an inquiry if there are objections. Once it gets to the Parliamentary stage, it follows rather a different course. If there are, in fact, no petitions against the order within, I think, fourteen days—fourteen sitting days—of the order being laid before Parliament, or any objections from members within a further fourteen days, then the order automatically becomes effective and becomes law and there is no further action that has to be taken. That means, if there are no objections, that the procedure is not only very much quicker but very much less expensive than the old provisional order procedure, which required the Bill to go through the drill regardless of whether there were objections or not.

The second major change was that if there are objections—that is petitions—they are divided into two classes. There is first the petition which goes to the root of the order, which is objecting to the order itself as a whole—that is discussed and taken on the floor of the House itself, and therefore the Minister concerned has the opportunity of saying why he thinks the order is expedient. If, on the other hand, the objection does not go to the root of the order but is an objection to some particular aspect—as, for example, the way it affects a particular piece of private property, or something of that sort—then it will go through the ordinary Private Bill procedure and will go before the committee and will be argued out in the same way as in provisional order procedure, with counsel, Parliamentary agents and all the rest of it. But there is a crucial difference there, too, in that the committee which examines it is a joint committee of both Houses as opposed to separate committees, and therefore, instead of having to go through the drill twice, the order only has to go through it once. This means, in turn, that it is less expensive as well as less time-consuming.

I think the other principal difference is that whereas the provisional order pro-

cedure has to stick to a rigid Parliamentary timetable which is laid down in standing orders, the special Parliamentary procedure is not bound by the same rigid timetable and therefore does not necessarily meet the same procedural difficulties that a provisional order would meet. That, I think, is the main difference between those two procedures, and, as I said, after the Act was passed in 1945, the special Parliamentary procedure was applied only to a very limited class of Acts that had the provisional order procedure before. It was not applied universally where the provisional order procedure was the procedure in the previous statute simply because it was felt, I understand, that each case ought to be looked at on its merits and it would be difficult to apply it universally without considering the circumstances of each particular case. But there was provision in the 1945 Act to enable the special Parliamentary procedure to be applied by order in council, and, in fact, it was applied by order in council to a number of Acts later on in 1949. But it has never been applied to either the Commons Act of 1876 or the earlier one of 1866, where the provisional order procedure still operates.

Finally, as regards the third class of order which you mentioned, Sir, that is statutory instruments, broadly speaking, they can take a number of forms. There can be just the simple ministerial order, which does not have to be laid before Parliament at all; it is a simple order by the Minister. There can be, again, an order which has to be laid before Parliament but nothing else has to be done; it just has to be laid and there is no further formality after that. There is another type which has to be laid but is subject to annulment, which is called the negative resolution procedure. There is the fourth main type which has to be laid and which is subject to affirmative resolution by both Houses, which means that there has to be an opportunity for a debate—and following an affirmative resolution by both Houses, the order becomes effective.

There are various other types of orders, but I think those are the four main classes so far as statutory instruments are concerned.

So far as commons legislation is concerned, I think that the broad position is this: that so far as the 1866 and 1876 Acts are concerned, the provisional order procedure applies; so far as the compulsory acquisition of common land is con-

cerned—that is to say, under the Acquisition of Land (Authorisation Procedure) Act, 1946, or the various other Acts which authorise various bodies to acquire common land compulsorily—the special Parliamentary procedure is the one that is applicable; and so far as the rest of the legislation is concerned—principally the 1899 and 1925 Acts—the ordinary, simple ministerial order, without being laid, is the procedure which is adopted.

42. There are certain cases, are there not, in relation to lands owned in severalty where a compulsory purchase order can be made with the usual provision for local inquiry, and so forth, but without its having to be laid before Parliament at all? Are there not some cases like that?—I personally am not aware of them, but perhaps I may ask my colleague about that?—*Mr. Richings*: There may be—it is not a matter for us.

43. In the case of common land it is always by provisional order, is it not?—Under the 1876 Act—otherwise by ministerial order.

44. Even where you are acquiring compulsorily?—No. There it goes through the special Parliamentary procedure.

45. But at any rate it appears that the most complicated Parliamentary procedure is applied to common land and not to land which is owned in severalty?—Yes.

46. That is the point which the Permanent Secretary was making this morning?—*Mr. Manktelow*: Yes.

47. Then in paragraph 7 it says that this procedure—this is an inclosure award, of course—is involved and is almost unworkable, and at the end of the paragraph it says that the provisions for statutory inclosure have become almost a dead letter. May I ask a question about this word ‘inclosure’? I think there seems to be some confusion in the literature about this. Inclosure is not necessarily fencing the land, is it? Does not inclosure mean distributing the common rights into severalty, so that inclosure is really the wrong word?—*Mr. Engholm*: Yes, that is perfectly true. Inclosure has, in fact, come to have two meanings. The proper meaning of inclosure is, as you have said, Sir, the allotment of the common land into different parcels. Under the 1876 Act it is distributed between the owner of the soil and the commoners. The other meaning of inclosure is the putting of a building or something of that sort on the com-

mon, which is regarded technically as inclosure because it does, in fact, inclose that bit of land on which it stands.

48. I wanted to raise that point because it arose out of what the Permanent Secretary said this morning. He said, if I remember rightly, that it was almost impossible to fence common land. We had no time to examine him on that point, but I did not understand why it was impossible merely to fence common land as distinct from inclosure in statutory form.—The point is this: that if a fence is put round an area of common land it does, in fact, enclose that land and it does mean that that land may possibly be denied to one of the commoners for the exercise of his common rights. The other aspect of it is this, and this is perhaps the more important aspect: that under the Law of Property Act, 1925, Section 194, broadly speaking, before any action can be taken to put a building or to put a fence or anything else of that sort on the common land, the Minister's consent has to be obtained.

49. But I think we agreed just now that fencing and inclosure are quite different things?—Yes.

50. I mean keeping the land as common land—you put fences around it, you allow gateways so that the commoner can get access for his cattle or sheep or whatever he has a right to pasture on the land, and any member of the public who has a right of access, if there is a right of access, can in fact go in through the gates. Why is that impossible?—That is Section 194, and the difficulty arises through this phrase ‘benefit of the neighbourhood’, which was mentioned this morning.

51. You interpret that positively? There has to be specific benefit to the neighbourhood, not merely negatively that there is no loss of benefit?—That is what we are advised. It has to be interpreted in a positive sense as providing some positive benefit to the neighbourhood.

52. *Mr. Arnold-Baker*: Am I wrong in supposing that, in fact, the erection of a fence has always at all times been regarded as, so to speak, the worst possible trespass against the commoner and that it is that which, in fact, prevents or makes it practically impossible to fence off roads?—I think the answer to that is that possibly, if it is regarded

as one of the worst offences, it has arisen through the history of commons. Earlier, the lord of the manor or the owner of the soil wanting to fence the common against the commoners could do so if he left enough common available for the others.

53. But the erection of a fence as such was a trespass and they could, in fact, bring an action for trespass against him?

—*Mr. Richings*: I do not know whether it would be by an action for trespass or not, but I think if the lord fencing the common against the commoners did not leave sufficient of the common for them to exercise their rights, an action could lie.

54. Because the lord had not fulfilled the conditions which were laid down in the Statutes of Merton and Westminster?

—Yes.

55. *Professor Roberts*: Surely in manorial waste there was an individual assignment to a freehold tenant and that was inclosed with an earth bank which he was under covenant to destroy at the end of his privilege. Did this objection to fencing come about when post and wire, which stood longer than an earth bank, came to be permitted? Or perhaps it is an academic point?—*Mr. Engholm*: I think that possibly in answering that point one has got to consider what type of common land it is. As you know there are various types of common land. There is manorial waste, which is the bulk of the ordinary common land now in the country, but there is also common land deriving from what were the old common fields which were originally arable fields and could be fenced off for grazing and similar purposes once the arable crop had been taken. Then again there are other types of common land, for example lammas land and half-year land which are, in fact, cultivated until the crop is taken off and then thrown open to common grazing afterwards, and they would, in most cases, be fenced. So I think, broadly speaking, the position is that the old commonable fields and the type of common known as lammas land or half-year land would quite often be fenced and may still be fenced today, but the manorial waste would not be. There is the distinction there between the types of common.

56. *Sir George Pepler*: May I ask one question? As I understand it, the lord of the manor very often had the right

to extract minerals. Was he under any obligation to fence or in some way protect the commoners from falling into the pit which he dug?—I am afraid I do not know what is the answer to that. We could let you know if you wish.

57. *Mr. Floyd*: I think the speaker who said that a fence had a sort of historical flavour touched on the right point. I know of cases where the commoners would willingly agree to fence off—for shelter belts, in one case, but the feeling was that if they fenced this land somebody would feel it was his right and duty to pull down the fence to assert the right of keeping the land open. That is the feeling which—whether right or wrong—has got to be faced, and is it not deeply ingrained in a number of commoners?—Yes.

Chairman: Perhaps we can go on to paragraph 8, that is Section 194 of the Law of Property Act, 1925, which I think we have covered already. I do not know whether I am peculiar in this, but I do not find that section very easy to understand. Then paragraph 10 refers to a point which really comes under the next group of paragraphs, 'The Interests of the General Public'—'. . . it is the exception for common land to be open space accessible as of right to the general public for air and exercise'. That brings us to the interests of the general public. I wonder if members of the Commission have any questions on this first group of ten paragraphs?

58. *Professor Stamp*: Could that particular sentence that you read out be clarified? 'It is the exception for common land to be open space accessible as of right to the general public for air and exercise'. I take it that the emphasis is on the words 'as of right'?—Yes.

59. Even in rural districts is not the common land, in fact, open in the sense that it is accessible without any restriction of fence or gate?—Yes, that is perfectly true. The point is that there is a legal right of access to certain types of common land, but by no means to all common land. In fact, in the majority of common lands there is no legal right of air and exercise—*de facto*, the public may use the land but it is not a legal right.

60. *Chairman*: We get those cases where there is a legal right mentioned, I think, do we not, in the next paragraph? In paragraph 12, for example,

you refer to a deed under Sub-Section (2) of Section 193 of the Law of Property Act, 1925?—Yes.

61. I was surprised to notice from the first memorandum which the Ministry submitted that the number of deeds which have, in fact, been registered under that Section is quite large and it covers something like 120,000 acres. Am I right?—A little less, I think—118,000 acres.

62. Why is that so, because I do not see any advantage that the lord of the manor obtains by using this power?—*Mr. Richings*: There is one advantage, Sir, and that is that he can then apply to the Minister to make an order of limitations which will control the use of the common by the public if the public are going there *de facto*. By making it a legal right he then gets this additional benefit of being able to make what are, in effect, bye-laws to control the use.

63. We have the figures now—there are 127 deeds and the area of land is 118,900 acres. Are those individual landowners—I am probably asking you too many questions of detail—or mainly the Crown Land Commissioners?—*Mr. Engholm*: No, I think the majority are individual landowners.

64. So that the Sub-Section has, in fact, proved useful?—Yes.

65. *Professor Stamp*: Could I follow the point a little further? Although we recognise that there are these large areas to which there is no access as by right of the general public, I think you would agree that the general public does not make that distinction and that they regard themselves as having rights over all unfenced land. That is, broadly speaking, true, is it not?—*Mr. Manktelow*: That is certainly the case.

66. Arising out of that, could the Ministry give us any information about cases where local authorities pay a nominal rent to the lord of the manor, securing right of access for the public?—*Mr. Engholm*: I am afraid I do not know the answer to that. We can look into that, Sir, but that sort of case certainly has not come to my knowledge.—*Mr. Richings*: They would usually acquire the right by the owner of the soil or the lord of the manor making a deed. Alternatively, of course, if the common was already in the confines of an urban district they would have it by statute. But the mere fact of paying a

sum of money would not acquire for the public the right of access—perhaps local inhabitants. It might encourage the owner to make the deed.

67. I have in mind certain specific cases of which I have no details, where the lord of the manor does receive sixpence a year guaranteed to him for 999 years, whereby the public now has right of access, but I am not clear from any of the evidence before us on what basis that is done.—*Mr. Manktelow*: Would the Commission like us to look into that, if Professor Stamp could give us the details?

68. *Chairman*: I think we should like it, although I do not see how you would get a statutory right to the public to enter under such an arrangement.—It would be rather interesting to know of these cases Professor Stamp mentions.

69. *Mr. Arnold-Baker*: And, arising out of that, supposing that a commoner objects?—*Mr. Engholm*: It does occur to me that it is just possible that this sort of arrangement which Professor Stamp has referred to might arise out of a local grant by the lord of the manor or the owner of the soil in bye-gone times possibly giving a right of access to the local inhabitants for specific purposes, provided that the grazing was undisturbed. It may be—I would not like to say that it is—some sort of arrangement arising out of that kind of historical development.

70. *Chairman*: But, generally speaking, the right of access is under what is referred to in paragraph 14 of the memorandum, Section 193 of the Law of Property Act, 1925?—Yes.

71. I find that Section also a little difficult to understand. I got mixed up with commas first of all, but I think we have straightened out now where the commas should go. I understand that the Ministry has always interpreted this Section—perhaps you will correct me if I am wrong—that members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is metropolitan common within the meaning of the Metropolitan Commons Acts, or manorial waste or a common which is wholly or partly situated within a borough or urban district. In other words, this applies to the manorial waste as well as to the common?—Yes.

72. Is that quite plain?—*Mr. Christie*: Yes.

73. It is not quite plain from the language of the Section.—That is so.

74. Even if it is manorial waste?—Yes.

75. It is rather an odd way of drafting it.—I think it is pretty clear what it means because of a curious accident which arose in the printing of the Act, as a result of which the comma had to be put back by a correction made by the King's Printer, to follow the word 'common': 'manorial waste'—comma—or a common—comma—which is wholly or partly situated within a borough or urban district. . . . The act of putting the comma back in at that point I suggest makes it pretty clear that the manorial waste and the common have to be bracketed together and put under this general restriction of urban district only.

76. I got into difficulties because I was looking at the Law Reports edition of the statute which does not contain the comma even now, but I have it plain now because I looked it up in Statutes Revised and the comma is there. At any rate, so far as the Ministry is concerned, the words 'which is wholly or partly situated within a borough or urban district' apply also to manorial waste, and therefore it is only in those cases that the common is open to the public as of right?—Yes.

77. So that in the vast open spaces in the rural areas of North Riding and West Riding and so forth, which are in fact used by people for air and exercise, there is no right at all to be there?—None, unless the owner of the soil or the lord of the manor has deposited a deed; or made a local grant.

78. To whom—to the inhabitants?—Yes, to the local inhabitants, but that would be exceptionally difficult to establish.

79. May we take paragraph 15 next—'The powers of management and regulation given to the district and borough councils have enabled much good work to be done, but difficulty has sometimes arisen in connection with the planting of trees to beautify the common.' That is an interference with the rights of the commoners, I take it?—Yes.

80. Is there very much that we have to investigate in respect of metropolitan commons which come under paragraph 16?—*Mr. Engholm*: I think probably the one thing that you will want to consider in connection with metropolitan

commons is the problem, or shall I say the effect, of Section 5 of the Metropolitan Commons Act of 1866 which more or less prohibits all forms of inclosure. That does make for difficulties because it means that, in fact, practically no form of inclosure—and I am using the word 'inclosure' in the sense of putting a building up or something on the land like a road—is possible and the only improvements therefore that can be made to the common are those improvements which are allowed if there is a regulation scheme applying to the common under the 1866 Act. As I mentioned earlier, the procedure for making a regulation scheme is similar to the provisional order procedure, and also for amending a scheme. If therefore in the present circumstances, as the result of the passage of time, the local authority concerned wishes to do certain things which are not sanctioned by the regulation scheme, then there is a difficulty, in the sense that it takes time and is expensive, in getting any amendment to that scheme. There is also the legal problem that most of these schemes do, in fact, prohibit any form of building or any form of inclosure in that sense and are pretty strictly limited because of the effect of Section 5. I understand that that Section is, in fact, very restrictive on the sort of work that can be done on a metropolitan common, even for purposes of amenity—even, for example, for putting up a cricket pavilion.

81. Or even a public lavatory?—Yes, even a public lavatory.

82. That means that you have to go to Parliament in order to put up a public lavatory?—Yes, and it is very doubtful whether you could do it even then because of the effect of Section 5.

83. *Mr. Floyd*: Might I ask a question about metropolitan commons? We have places like Wimbledon Common, Hampstead Heath, Epping Forest—is Wimbledon Common in fact a common? Is Epping Forest a common?—Broadly speaking the answer is yes.

84. And are there people who still have common rights on them, are there commoners?—*Mr. Christie*: There certainly are in Epping Forest. Whether there are in Wimbledon and Hampstead, I do not know.

85. *Sir George Pepler*: On Wimbledon Common is there not a golf course?

86. *Chairman*: Making a golf course is not inclosure, is it?—There are

certainly golf courses on commons, and probably they are legal.

87. *Mr. Floyd*: Who would be the regulating authority for a golf course on a common?—*Mr. Engholm*: Of course, regulation schemes can provide for games to take place and, golf being a game, it would possibly come under the regulation scheme. Therefore it would be the local authority or conservators normally who would be the regulating authority and they would presumably get such things as the green fees, and so forth, as a result of running the course.

88. *Chairman*: But there is some doubt as to whether putting a golf course on common land is legal?—I do not think there is any doubt if it is provided for under a regulation scheme, or does not interfere with the various rights.

89. Which would have to have the approval of Parliament?—Yes, a metropolitan scheme or an 1876 Act scheme would have to have the approval of Parliament.

90. And are most of these metropolitan schemes recent, or are they schemes brought in immediately after the 1866 Act?—Almost all of them are 19th century schemes.

91. So probably there is nothing about golf courses in them?—*Mr. Christie*: We would have to look into that in detail for you, Sir. May I just add one point to what Mr. Engholm has said? There is one other effect which arises out of the legal structure of the Metropolitan Commons Act, and that is that, compared with other commons, they labour under the disability that there have to be Parliamentary schemes—that is Parliamentary approval to schemes—whereas, under the Commons Act, 1899, which provides the regulations generally for amenity purposes only the Minister's approval is necessary. In other words, while of course, metropolitan commons have all got schemes now, or most of them have, if these schemes are to be amended it can only be done at present by having another Parliamentary scheme and going to all the trouble and expense that that involves. London is at a disadvantage in that compared to the more fortunate districts. The latter can simply go to the Minister and it costs a great deal less money.

92. *Sir George Pepler*: I would like to ask a question on paragraph 10, with

reference to the second sentence—'Any project for reclamation and the like which encroached on these rights but did so with provision for the commoners to share in the advantage of the improvement, might well be welcome to them.' How would they do so?

—*Mr. Engholm*: We had quite a general point in mind. If you take the derelict commons which are covered with gorse and bramble and turf which are so poor that they are of no use for grazing but there are rights of estovers or turbary, you get the situation that agricultural development, in theory, would rob the owners of their estovers and turbary rights and again would cut them off from a source of fuel supply. If you set about agricultural improvement in a case like that, the procedure, of course, involves inclosures in the technical sense and the extinguishment of common rights. As things are, the extinguishment of common rights would be settled by monetary compensation, which might well start an objection on principle from the commoners; even though this interest in the common is worth very little to them there is great historical attachment to those rights. But if it was possible, in the case of payment of compensation, to make some arrangement so that, after the agricultural improvement had taken place, the old estover and turbary rights could be replaced by a grazing right, for example, the commoners would find the change a good deal more attractive and might even jump at it. Another example which I have in mind is that supposing it were possible to cultivate the common, it might be that the commoners could form a group which could lease the land to a tenant and divide the rent up among themselves. In that way they would have a permanent investment. As it is—of course, this has been repeated many times to-day, Sir—a flexible right of that sort, which reserved the commoners' interests, is subject to all the troubles arising from the Law of Property Act. The point we had in mind was simply that this sort of thing could be considered if it were decided that some attempt should be made to develop the land in the commoners' own interest.

93. *Chairman*: Is anybody interested in estovers and turbary rights now? Do they not use gas, electricity, petrol, coal, and so forth?—I cannot report that the interest is completely dead. If you get far enough out into the wilds you will

find that here and there the estovers' right is quite valuable. I am told that this is the case in some very remote parts of Cumberland.

94. They still use wood for fuel?—Yes. But as a very broad generalisation, I would say that these rights are often just let go.

95. *Mr. Floyd*: In the West Country where there is not much straw grown, they still cut the bracken for bedding. I do not say that it is very valuable but is it not thought to be very useful and is taken away?—Yes.

96. *Chairman*: Then we come to the national interest in the use of land, about which the Permanent Secretary spoke mostly this morning. There is in paragraph 18 the point which he made that public authorities have the power to acquire land under the procedure laid down in the Acquisition of Land (Authorisation Procedure) Act, 1946, but there is a special procedure for common land. I have asked about that just now. Then there are the difficulties of purchasing common land by agreement, and paragraph 20 refers to private housing development. Is there much demand for common land for that purpose?—*Mr. Manktelow*: No. I think the difficulties of approving any such application are sufficient to prevent people from applying. It is generally known that there is virtually no possibility of common land being developed for private houses.

97. What is the relation between your Ministry and the Ministry of Housing and Local Government in relation to town and country planning schemes? Presumably this land might be put into a town and country planning development scheme as land capable of being built on?—*Mr. Engholm*: It would normally be put in as common land, of course, but, if there is any suggestion that it might be put in for some other purpose, there is the right to object to a draft development plan and provision for hearings to be held before the development plan is, in fact, confirmed by the Minister of Housing and Local Government. We should no doubt be consulted if any particular case arose in connection with common land if the Minister of Housing and Local Government wanted our advice on any particular point, but it would be for those interested in the common to object if they wanted to do so. But even if it were put into a

development plan it would still not override the law of commons, and if, later on, it was wanted for some particular development purpose it would still be necessary to go through the appropriate procedure under the Commons Acts in order to get the necessary consent.

98. But would that be special Parliamentary procedure or provisional order procedure?—That would depend on how it was done. If it was a proposed compulsory purchase of a part of the land, it would be the special Parliamentary procedure if no equivalent land were offered in exchange. If, on the other hand, a person had bought the soil, and become the owner and wished to put up some building or something of that sort on the land, then that would be under Section 194 of the Law of Property Act, 1925.

99. *Sir George Pepler*: May I follow the same thought up? It was rather suggested this morning that a proposed new road might be diverted to avoid going over common land. Could you say if you have had experience of that actually happening, when you have been consulted?—I cannot recall any specific instances in the sense that I can name them, but I do remember that on one or two occasions in the past the question of possibly taking a road over common land has arisen and that one of the factors one has had to keep in one's mind is that any compulsory purchase order for that purpose—creating a new road as opposed to widening a road—would necessitate special Parliamentary procedure or the giving of equivalent land in exchange and to that extent would be more difficult than the ordinary compulsory purchase procedure.

100. *Professor Stamp*: Following up compulsory purchases, could I ask for a little clarification on paragraph 18? 'Public authorities have the power to acquire common land, like other land . . . but . . . they must provide an equally advantageous area of common land in lieu.' I cannot quite see how a public authority can do that unless they start creating new common land and new common rights.—That is exactly the point, Sir, and it is, in fact, very difficult. There are two alternatives under the Acquisition of Land (Authorisation Procedure) Act. If, in fact, the Minister can be satisfied that the authority concerned can offer in exchange for the common land which is

being taken an equally advantageous piece of land elsewhere which would be put into the common and would be made common land, then he can certify that that is being done, in which case the order does not have to go through the special Parliamentary procedure. That is an exception to the normal drill of special Parliamentary procedure.

101. Has it ever, in fact, been done—that new common land has been created?—Yes, it has been done. It is mostly merely bits of land which are just fringe areas.

102. I take it in that case it would be common land designated for public access and not for grazing?—*Mr. Richings*: It takes the exact rights from the old common land. The new land given is subject to exactly the same rights and privileges as the old land, so that if there were public rights they would be transferred, and if there were no public rights there would not be public rights on the new land.

103. It is just a transfer of rights from one actual piece of land to another piece?—Yes, that is it.

104. *Sir George Pepler*: Is there a difference in regard to Epping Forest?—*Epping Forest* is governed by a special Act.—*Mr. Engholm*: But on that particular point there is, of course, not only the difficulty of the authority concerned having the land to offer in exchange but there is also the difficulty that the land which is being offered in exchange may be very much more valuable than the land which is taken away—valuable from the agricultural point of view.

105. *Chairman*: And then it becomes subject to all the restrictions of common land instead of being used productively for agricultural purposes?—Yes.

106. *Mr. Floyd*: May I refer to paragraph 21 and ask for a little clarification? As I read it, if you have a piece of land which is overgrown with thorn, for instance—an example most of us have probably seen is Maidenhead Thicket, or somewhere like that—is it the suggestion that it would not bear the expense of cultivation but that it might be entrusted to the Ministry of Housing and Local Government if they wanted to authorise the erection of houses? The point I am driving at is this. We have heard this morning that about 4 per cent. of the country is sub-

ject to these common rights. As we none of us know how the country is going to develop during the next two or three hundred years we hope it may be possible to keep some uncommitted land for our successors to plan. If we say that this land is too expensive to reclaim for agriculture or forestry but that it can go for building, it seems rather an irrevocable decision. Is that the meaning of that paragraph?—*Mr. Manktelow*: I think the meaning is that if the land itself is pretty poor and if the expense were incurred, the value for agriculture would be comparatively low.

107. It is on the quality of the land rather than on the present condition?—Yes.

108. Present condition is a passing thing; quality is more permanent?—Yes, exactly.

Chairman: Next we come to the general subject of agriculture. I think we have covered everything in the paragraphs up to No. 21. I am not sure that I need go through all this, as it is the material which the Permanent Secretary was using this morning. But I am sure members of the Commission have questions on these matters—first agriculture, then disease control, pest control, land drainage and water supply, and finally afforestation.

109. *Professor Stamp*: Could I ask a general question which does not seem to be quite covered? In the first memorandum of the Ministry, paragraphs 7 to 11, one or two mentions are made of stints, but it does not appear again in this second memorandum and I wonder if the Ministry could give us a little more information about stints? The previous reference says 'in the North of England' and seems to apply to land which has already been inclosed, but am I not right in thinking that in a good many common lands, including the West of England, there is stinting obtaining on uninclosed common land and that there is actually a sale and a purchase of stints quite independently of the sale and purchase of farms?—*Mr. Richings*: Those are rather wide questions to answer all in one, Sir. What are called stints in the broad sense—that is, the right to put a specific number of cattle on the common—in a certain part of the country are sold. Stints are an example of the different way in which the commons have developed in different parts of the country and the way that customs of

different times in history have frozen. You therefore get a distinction between the rights in one part of the country and another. In the North of England as well, I think, you get this right of being able to sell your title to put a specific number of cattle on an enclosed piece of land—enclosed in the sense that it is fenced but not had its common rights extinguished. But stints can also derive from comparatively recent legislation, perhaps as a result of an inclosure which took place, say, in the 18th century by an award made under a Parliamentary Act, with a large piece of land being deliberately left out of the inclosure and the rights over that being stinted under the award. Perhaps that is what you had in mind?

110. *Partly, yes.* What was exercising my mind was that we might find, in the course of our deliberations, that not only were certain tracts of country subject to commoners' rights but that there might be those who were not commoners who claimed, however, to have purchased the right of stinting on the land concerned. Would those be rights of common in gross?—Yes, I think so.

111. *Chairman:* But I think the point which possibly Professor Stamp is reaching is in paragraph 28, is it not, where it is stated that owing to modern techniques of cultivation and of dealing with pasture land, the size of these stints is now quite irrelevant to the use of the land?—*Mr. Engholm:* That is so.

112. *Mr. Morris:* On the question of land usage, the Permanent Secretary made the point that present restrictions made it impossible for the improved techniques of the present day to be put into operation on many of these lands. I would suggest that his submission was that rotational farming was implied as a method of better use of that land, which requires running through a course of arable cropping. The Permanent Secretary did not make the point, however, of directly reseeding worn-out grassland such as there is on many of the commons today, and a direct return, after a short period, to grazing. Can we take it that the Ministry representatives would agree that that nowadays would be a great advantage?—*Mr. Manktelow:* Yes, entirely.—*Mr. Engholm:* Perhaps I might just add a word there. It is perhaps as well to remember that a very large part of the common land in this country, according to our information,

does consist of the upland commons in the hills of Wales, for example, or up in the North of England, which form very often an integral part of the farming economy of the surrounding farms. They are part and parcel of the farming system and are necessary for the economy of the farm from the point of view of grazing, and yet the possibility of improving the pasture by direct reseeding is prevented because of the difficulty of fencing, drainage, and things of that sort.

113. *Professor Roberts:* I would like to ask a question on paragraph 26 of the Ministry's second memorandum—'Under the Hill Farming Acts, it is possible in certain classes of case to work on the basis of a majority . . .' I want to ask where that majority is established and operates, how it compares to any joint voluntary activity of those enjoying common rights if, under the 1876 Act, they get a two-thirds majority of the commoners to agree to a claim for improvement? That is pretty well a dead letter in the West; I think they still think that they must get complete unanimity. I do not think that the benefit of a two-thirds majority under the 1876 Act is known to be operative, but, assuming that it is, can I ask how the benefit under the Hill Farming provisions would compare with the benefits obtained voluntarily by the two-thirds majority under the 1876 Act?—*Mr. Richings:* I think the answer to that, in the first place, is that under the Hill Farming Act the Minister has a special power to carry out improvement work on common land—which is the main distinction, of course, between a scheme under the Hill Farming Act and a voluntary scheme; it is the Minister who carries out the work. But he has got to publish notice of his intention to do this work and invite commoners who are willing to pay a proportion of one-half of the amount and commoners who wish to object to the scheme to write to him and say so. If one commoner objects—provided that his objection cannot be classified as of no standing—then that stops the scheme. So, in detail, it is not quite enough to say that a simple majority can carry the day. But the other thing which I think will help you is that, with the 1876 Act, you have to get two-thirds of the commoners positively to consent. They have to say so. With the Hill Farming Act it is acquiescence. If the commoners do not object and there are a sufficient number who

are willing to contribute to make it worth while to go ahead, the scheme will probably go ahead.

114. *Chairman*: What happens if one person objects and his objection is found by the Minister not to be groundless or frivolous?—If one person objects and his objection cannot be classified as either groundless or frivolous the Minister stops the scheme and the scheme does not go ahead.

115. If it is groundless in the opinion of the Minister?—If it is groundless he ignores it.

116. Say the Minister does, in fact, take notice of the objection, why does that stop the majority from going ahead?—Because that is the effect of the Act.

117. *Professor Roberts*: I am intrigued over the little application made of this provision. Are the majority of commoners deterred by the fear of the potential single objection not being frivolous and is it this fear which deters them from initiating such applications?—

Mr. Engholm: I wonder if I could attempt to clarify it in this way? The wording in paragraph 26—perhaps because we have tried to compress it—is not quite accurate and may not present the right picture. However, what happens over a hill farming scheme is this: if an improvement is contemplated under the Hill Farming Acts on common land, the Minister has to advertise and, as *Mr. Richings* has said, if one single commoner objects then the scheme fails—nothing can happen. If, on the other hand, there are no objections from the commoners the Minister does not have to get the positive acquiescence of two-thirds of the commoners to the scheme but, as a matter of administration, because he has got to get 50 per cent. of the money from someone, he would not go ahead with the scheme unless, broadly speaking, a majority of the commoners were prepared to contribute their share of the cost of the improvement. Therefore, as a matter of administration, one can say that provided there is no objection and provided that there is a sufficient majority of commoners to share the other half of the cost which is not grant-aided, then the Minister will go ahead; but if he cannot find sufficient commoners to bear their share of the cost then he will not go ahead, because the other 50 per cent. of the money for the scheme will not be forthcoming. As regards why it has been so little used—one can only guess, but

I think the answer probably is the difficulty of finding the 50 per cent. which is not grant-aided.

118. Would you say probably, too—which strikes me at the moment—the fact of the area being in the process of climbing up to attestation? It may be, if the provision still remains, that in the future when attestation is complete in an area there would be a further incentive to seek the 50 per cent., but it is made secondary to the other consideration of stock holding in the meantime?—I think that may well be.

119. *Chairman*: I think it may become clearer to me if you would tell me the kind of objection which is raised under Section 12, Sub-section 3, 'If an objection to the doing of the work is duly made by any person so claiming as aforesaid . . . then . . . unless either (a) the objection is withdrawn by that person or appears to the Minister to be frivolous; or (b) the Minister is satisfied that the claim is groundless'—now, what sort of claim is not groundless?—*Mr. Richings*: I think, Sir, we can only give you a general answer at the moment and perhaps we could discover some specific examples at a later date and submit them to you: but the general one is that while improvement work is going on the land can be fenced, provided the land is not enclosed for more than three years. Once the fence has come down, even improved land will probably begin to deteriorate. Other cattle on adjoining open land will come in—'pirates' they are often called—and consume the lush pasture; and the commoners frankly do not think it is worth paying the money so that other people's cattle can benefit. That is only a general example but, as I say, we can probably find specific examples.

120. *Professor Stamp*: Is not the common objection made by the retrograde farmer who says, 'I have always put my cattle on that common; it is good enough for me as it is and I do not see why I should pay to have it improved.'? In other words, he will not pay any money for the improvement?—Yes.

121. *Chairman*: But his objection, in fact—assuming he is not going to pay—is frivolous?—He will remain silent, Sir, and hope to benefit from the good will of the others.

122. *Sir Donald Scott*: He will not pay anything?—He will not pay anything.

123. *Chairman*: I suppose you are not able to give us any detailed information as to how one can distribute the million and a half acres, or whatever there are, among these different types of land?—*Mr. Engholm*: We have not, of course, got any detailed information on that. As you know, there has not been any sort of survey of common land since last century, and therefore the only thing we can give you is some sort of general impression as to where the bulk of the common land lies. The impression we have formed is that possibly up to two-thirds of the 1½ to 2 million acres lies in the upland areas and is upland grazing, and the remaining third is either metropolitan and urban common land or commons in lowland rural areas. That is, broadly, the sort of division, from the information that we have got in from our offices over the country, but we have no statistical basis for that at all.

124. I take it that practically all of this upland grazing land has no right of access on the part of the public?—Unless it has a deed under Section 193 of the 1925 Act; or it is just possible—and I am afraid I do not know the details of this—that it might be access land under the Town and Country Planning Acts.

125. You cannot go a little further, can you, and divide up the one-third for us between land which is merely being used for amenity purposes and land which is not?—I am afraid we cannot—not on the information that we have got—and indeed I think it would be very difficult to get that information except by a really detailed survey.

126. *Professor Roberts*: The great misfortune of it, from an agricultural point of view, is that the land lying dead and idle and yet of a high potential is in the remote districts. There is normally no question of right of access to confuse the issue: the difficulty is the one of immunity. As we have seen in the last case we examined, if a single objection can be made and not proved to be frivolous it can stop the improvements; but for this immunity could not this land that is free from other public interference be exploited and carried to a higher potential of agricultural productivity in a way that would not upset the economy of the farms participating? I have instances in mind—the officers of the Ministry would know of them—Dolfor Hill in Montgomeryshire and Llanhister

Common in Radnorshire, where during the war splendid arable crops were grown, and the residual grass put down 10/12 years ago is a standing testimonial to a long-standing improvement. And yet it would seem, would it not, that that cannot be repeated or extended because of this lack of unanimity in implementing it?—*Dr. Hoskins*: Might I pursue the question? At this point it becomes relevant—was it the Ministry's view that only 21,000 acres out of the supposed total of 1½ million acres were worth their attention and requisitioning in wartime conditions?—*Mr. Manktelow*: Not necessarily: it was to some extent a question of what the county agricultural executive committees could handle. As I was saying earlier at this morning's session, they had taken possession of a very considerable area of privately-owned land which they had to arrange for farming, some of it by direct labour and machinery services. If they had had the resources it is more than likely that more common land would have been requisitioned in war.

127. But—this is going back to paragraph 36 of the first memorandum—in fact, of the 21,000 acres you say, 'Much of this land was found to be reasonably productive.'—Yes.

128. That phrase does not suggest a high degree of success does it?—Reasonably productive.

129. Do you mean under wartime conditions, or would it be true also of a peacetime economy?—We did not take so much account in the wartime operations of the costs involved as we should do in peacetime, but there is no doubt about it that a lot of this common land did grow quite good arable crops; and in the circumstances in which we were then placed, when it was necessary to grow food irrespective, to some extent, of the cost, it was certainly the right thing to do; and these common lands made quite a valuable contribution.

130. I agree that it was the right thing to do in the circumstances, but I wondered whether you had any information about the possibility of the same land—of these 21,000 acres—being economically farmed today without the impetus of a war?—Some of the land, some 3,000 acres of the land which was requisitioned during the war, is in fact being purchased, after the war, by the Minister compulsorily under the Agriculture Act, 1947, and that is an indication,

I think, that that land at any rate could be economically farmed.

131. *Professor Stamp*: Following Dr. Hoskins' point, I wonder whether the Ministry could give us fuller details of the 21,000 acres, as this land is so interesting—actually what areas are concerned, together with their comments on the type of experience, if they have that information?—It will need a certain amount of research in the records, but we will certainly do our best to supply you with all the information we can.

132. I feel that this 21,000 acres is a sample which might be of very great interest to us if we had the actual wartime history of its use in intensive cultivation. I am interested in linking it up with climatic and soil conditions in the areas concerned. I feel we might thereby get a sample, might we not, from many different parts of the country?—Yes, certainly.

133. *Chairman*: While we do not want too much detail may I ask for more information about this land? Presumably it was in small blocks—there are no instances of hundreds of acres, or anything like that?—Yes, there are.

134. Would not Professor Stamp's object be gained by taking a few samples of lands which would give the necessary information?—I wonder if it would help if we put in a schedule—which we could do fairly easily—of all the common lands that were requisitioned under Defence Regulations and then the Commission might like to pick out from that list the cases on which they would like more information? Would that be useful?

135. *Professor Stamp*: We shall then get from the Ministry a schedule of land which was requisitioned?—Yes, we shall have to collect it from the counties, I think. It may be a little while, but we will certainly give the Commission whatever information we can get.

136. *Chairman*: And then we can ask further questions?—Yes, to follow it up.

137. *Professor Stamp*: I think it would be very interesting. I happen to know of land of 600 acres and other quite large tracts which have been used in that way.—*Mr. Engholm*: I should like to make this proviso about the information we can provide—quite a lot of this land was let, during the time it

was under requisition, to a licensee and was not being farmed direct by the committees, and in those cases the committees would not have details of the finances or of the annual yields of the crops or anything like that: they could only give a general impression from what they had seen of the land in going round and managing it and the rent charged and that sort of thing.

138. *Chairman*: Did you charge an economic rent in those cases?—Yes, we charged what we thought was a fair rent in the circumstances.

139. *Dr. Hoskins*: Is it an unfair deduction to say that of the requisitioned land the Ministry now feels that only 3,000 acres of it were, in fact, an economic success?—*Mr. Manktelow*: No, that would be an unfair deduction.

140. That is not your view?—No.

141. And would you feel that the 21,000 acres itself was merely a sample which ought to have been much larger, if you had had the equipment to deal with it?—It might well have been that.

142. *Professor Roberts*: I had charge of a county during the war myself, and the real bottleneck was the availability of fertilisers. We felt we could have got far more out of those lands if we had had the quantity of fertilisers required to bring them up to perfection, but we could not get it. All we could do was to aim at using our allocation for making B land into A land, and C land into B land. Was not the lack of fertilisers in some cases the limiting factor?—It was a case of making the best use of resources.

143. *Mr. Morris*: Were there not areas which were abundantly successful in certain counties and formed some of the best arable land of the counties?—Yes.

144. *Chairman*: Would all this land—21,000 acres—fall into the 500,000 acres which is not hill grazing land? Hill grazing land is not taken over for arable purposes?—No, most of it would not be hill grazing land.

145. I am still trying to classify the various types of land, and I am taking it that this is in the one-third of 'other lands' to which you have referred?—*Mr. Engholm*: There were areas of upland common land which were taken over in Wales and were

reclaimed during the war under the Defence Regulations.

146. *Mr. Floyd*: I would like to ask one general question—we all realise that, under the pressure of wartime restrictions, it was not possible to do everything in perhaps the cheapest way because of the lack of time, and so on; but supposing this 21,000 acres had been reclaimed under peacetime conditions on a more leisurely programme, is it the Ministry's view that it could in fact have been done by the pooled resources of all the commoners—supposing they had been 100 per cent. willing—or was outside finance absolutely necessary?—*Mr. Manktelow*: I would have said that outside finance would have been required for it—much of the common land needed to be cleared of scrub, for instance.

147. So in fact any scheme for improvement, on a national scale, of these common lands would have to have national finance of some form behind it?—I think almost certainly.

148. *Professor Stamp*: Is it not a fact that the major difficulty was an absence of any farm buildings—that the land reclaimed was without any farm buildings, and that some capital was needed for that purpose?—Yes.

149. *Professor Roberts*: It was in fact unequipped land at great distance from a steading, but with a great potential?—Yes.

Chairman: I think members have some further questions to raise.

150. *Mr. Morris*: I would like to raise one further point as regards disease control, and that is that under the existing legislation are not the most progressive commoners suffering in fact because of their inability to make use of their common rights?—Where they have progressed towards attestation of their cattle, they cannot graze common land where unattested cattle can graze, and must forgo any rights they have because of the exclusion of their stock for that reason unless all the users become attested together.

151. *Sir Donald Scott*: I would like to ask the Ministry if they consider it would serve any useful purpose, in order to get more information about commons, to have a supplement to the 4th June Schedule?—Questions could be asked, if authority were given, in the June Return. I say 'if authority were given' because the 4th June Return is already

a very lengthy Schedule. It has almost become a music hall joke about farmers having to fill in these large forms, so that we have to be very careful indeed about the extension of the return form: but if questions were asked about commons, I am just wondering whether the replies that would come would be very reliable in the majority of cases. No doubt in some cases you would get reliable information, but in others the replies might well be hardly worth bothering about.

152. The way my mind was working was something on these lines—first, whether a farmer has any common rights; secondly how many stints or gates are involved; and how many stock they normally graze on those. Certainly it adds to the number of questions that are on the paper as it is, but it would only have to be filled in by comparatively few farmers, and would even be a separate document.—I wonder whether all the farmers who hold common rights really realise exactly what answers should be given to questions of that kind—but perhaps in the majority of cases you would get a reliable answer. You, Sir Donald, know farmers much better than I do.

153. I think you would in the north and in the Lake District and parts of Northumberland because—I am not suggesting that we are more intelligent—I suggest they would find no difficulty in saying, 'Well, I have X stints on that field; I have the rights to X cattle and Y sheep, but I normally have only X grazing.'—I think you are right as regards several parts of the country. I am just wondering whether, in parts of Wales as well as in England, you would get such clear answers.—*Mr. Engholm*: If I may say so, Sir, I think there is probably a distinction, too, between the type of common that Sir Donald has in mind—in the upland areas the upland grazing may form an important part of farming economy, and therefore the farmers are very well aware of their rights and their stints and their gates, whereas in many other parts of the country, particularly in the lowland parts where the rights are much less well defined and perhaps less valuable to the farmers concerned, it is perhaps more doubtful whether the farmers would be able to answer this question.

154. *Professor Stamp*: Following up this point, I wonder whether the Ministry can give us a little more information stemming from the 1940 Farm Survey? If I remember rightly, although the question about grazing rights was not

specifically asked, in the farm maps which were prepared it was quite clear that some upland farmers had included land over which they had only grazing rights: others had excluded that land. I know it was the intention at the time to analyse those farm maps, and I wondered how far that work has proceeded?—The difficulty about the use of the maps and the Farm Survey is, I think, that while they did attempt to show the farms with their boundaries, they excluded quite a lot of land. Therefore one could not necessarily say that those areas of land which were not within farm boundaries, would, *prima facie*, probably be common lands. For example the Survey excluded the holdings of less than five acres. It excluded also waste and derelict land and scrub land and scrub woodlands; it excluded certain types of rough hill grazings and all urban and semi-developed areas. Those blank areas which are not covered by farm boundaries therefore are a mixture of all sorts and types of land, and for that reason they would not give us very much information about common lands.

155. *Sir George Pepler*: There was a question which arose this morning. We were told about the use of the shelter belts of trees, and Sir Alan did say that these belts would be useful for forestry. If you have belts of trees for shelter, can you cut them down?—*Mr. Manktelow*: Yes, in due course; and replace them.

156. You do it systematically?—You do it by thinning, quite gradually, and replacing.

157. There was another question about forestry—we were also told that the Forestry Commission did not use their powers of compulsory purchase to any extent. I take it that is because they have done pretty well by voluntary purchase?—I think they would say they have not done as well as they hoped to do by voluntary means, but it is a matter of policy. The Minister does not wish to use compulsory purchase powers.

158. *Mr. Floyd*: May I mention one point? The Forestry Commission did lay down—or the Government laid down—a post-war forestry programme just after the war. The Forestry Commission are at the present moment behind in their programme—and the limiting factor appears to be the purchase of land. When we say to visitors from overseas

we cannot increase our forest area because of lack of land, they say, 'Well, what is all this land—there are thousands of acres here which could be planted'. The answer comes, 'Oh, but that is common land'—and when they say, 'What is common land?'—'Common land is land which cannot be touched.' The way they have tackled the problem in France is rather different: some of their land is planted by a Government service, but the Government has not actually purchased the land. When the woodlands are established, the Government recovers the costs of planting by taking half the profit of each consecutive thinning. Once it has recovered its initial cost the revenue from the forest goes to the commune or, as you may say, in our case, the commoners. It is not a case of buying the freehold, but of having government grants for establishing eventually self-supporting woodlands; the initial cost is finally recovered and the loan, while outstanding, provided at very nominal rates of interest. Once the forest is in profit then the profit goes to the original commoners, with a charge for management only. But perhaps you are not responsible and this is a matter for the Forestry Commission, rather than the Ministry of Agriculture?—Yes. We are not responsible in any way.

159. *Mr. Evans*: I have just one point about the 20,000 acres that were requisitioned—am I right in thinking that were it not for the policy under which the Minister is operating he would rather like to retain some of them?—He is retaining some. He is purchasing 3,000 acres.

160. But would he like to retain more?—Yes, some of it—if there had been a willingness on the part of the commoners to agree that the land should be taken, but not otherwise.

161. *Chairman*: Are there any further questions today? Thank you then very much. May we see you again tomorrow morning? I would like, for example, to go into the question of 'benefit of the neighbourhood'. I very much doubt whether we could do it now, and in any case you might possibly want to brief yourselves on it?—It might be useful, and then we can deal with it tomorrow.

Chairman: Thank you very much indeed for your information.

(The witnesses withdrew)

Thursday, 8th March, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER
MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.
MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.
DR. W. G. HOSKINS, Ph.D.
MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.
SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.
PROFESSOR ALUN ROBERTS, Ph.D.
SIR DONALD SCOTT
PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Examination of Witnesses

MR. B. C. ENGHOLM	...	...	...	...	<i>Under Secretary</i>
MR. J. A. K. CHRISTIE	...	...	...	...	<i>Assistant Secretary</i>
MR. N. H. BREWIS	...	...	...	...	<i>Assistant Solicitor</i>
MR. L. D. G. RICHINGS	...	...	...	...	<i>Principal</i>

on behalf of the Ministry of Agriculture, Fisheries and Food

Called and Examined

162. *Chairman*: Mr. Engholm, I think you are representing the Ministry this morning?—*Mr. Engholm*: Yes, Sir.

163. I am afraid I would like to talk a fair amount of law if you will?—We will do our best, Sir.

164. First of all, we did not deal very much with the lord of the manor, yesterday. I take it that the owner of the freehold is not necessarily the lord of the manor in the case of a common, is he?—The owner of the soil is not necessarily the lord of the manor.

165. But whoever is the owner has still all the rights of the land apart from the common rights. He cannot do anything with the land which interferes with the common rights, but can he do anything else?—That is right, subject to the law. He is the owner of the soil.

166. We have received some complaints, I think one might call them, already about persons who think they not only have a right of access to a common, but can also do other things on the common which do not merely amount to passing and repassing on the common. I take it, so far as the law is concerned, they have to show they have civil rights on the common?—That is, as I understood it, the position.

167. The owner usually has manorial rights?—Yes, very often.

168. As to fencing, am I right that he can in law?—The problem of fencing is one which arises out of Section 194 of the 1925 Act.

169. Was there anything in the law before 1925 about fencing?—The only difficulty about fencing before 1925 was if it interfered with the exercise of the common rights.

170. That is the commoner's right of access?—Whatever rights he happened to have.

171. We have got it plain, have we, that there is a distinction between fencing and other things?—There is a definite distinction between fencing and other things. Perhaps the best way I can explain that is the difference between inclosure with an 'i' and enclosure with an 'e'. Fencing is not by itself technically inclosure with an 'i' and before the 1925 Act, which specifically included fencing, it would have been possible unless it had the effect of impeding the commoners' rights.

172. Inclosure would take the rights away?—Inclosure would. Fencing would only have been prevented before the 1925 Act if in fact it had the effect

of preventing the commoners from exercising the rights they had over the soil.

173. Can you tell us what is the background of the two Sections of the Law of Property Act, 1925?—We can tell you what we gather to be the origin of them. The position was this, as we understand it. The Law of Property Act in 1925 was originally based on an Act of 1922. It was largely a consolidation Act. The original Bill was considered—it was promoted by private individuals at that time—by a Joint Select Committee of both Houses, and they came to the conclusion that the effect of extinguishing copyhold which was going to be undertaken in the 1922 Bill, would probably mean that the manorial courts on the one hand and manorial records on the other would be likely to fall into disuse and not be kept. They thought that might well weaken the defences of not only the common right holders, but any other rights of access there might be. So it was decided, as we understand it, that a new clause ought to be put into the Bill which would confer on the public certain rights of access. That was Section 193 of the 1925 Act, which gave legal rights of access to the public, as you know, over metropolitan commons, over commons wholly or partly within an urban district or a borough, and those to which deeds have been applied by the owner. What then happened was, that it was thought that the giving of public rights of access of this sort might prevent the owners of the soil from making grants of common land, as they originally could under the Statutes of Merton and Westminster—which had previously been made subject to the Minister's consent under the 1893 Act. It was felt that the rights of public access would prevent the owner from granting bits of the common land for specific works such as public buildings and that sort of thing. It was then decided that another clause should be put in. This became Section 194, which said in effect that the erection of buildings or fences or works (other than mineral extraction) would be illegal except for the Minister's consent. The intention as far as we can understand it, was to continue the power of the owner of the soil to make grants of land, subject to ministerial consent. In fact, the effect of Section 194 seems to have gone somewhat wider than intended because it applies, we are advised, to all common land and not only common land to which there is a right of

public access. That, as we understand it, is the history of those two Sections.

174. In fact, what has happened is that Section 194 has made the law very much more rigid than it was before?—It was, I understand, intended to be a restrictive clause, and not an enabling clause.

175. It applies to any land which, at the commencement of this Act, is subject to rights of common?—That is so.

176. May we now look at the figures which you have given us in Table III of Appendix III to the first memorandum? They are the cases completed under various Acts. I am now mostly on 'benefit of the neighbourhood', so I am not very much concerned about metropolitan commons and things like that. You will notice under the second column 'Commons Act, 1876—Inclosure', which presumably means inclosure under the Act of 1845 as amended by the Act of 1876, there was a certain use of those provisions until the present century?—Yes.

177. There has been no use at all since?—Virtually none.

178. Is that due to a change of policy, do you think? When was the function of making orders under these Acts transferred from the Inclosure Commissioners to the Board of Agriculture?—*Mr. Richings*: When the Board of Agriculture was formed.

179. That would be the 1889 Act. Is there any connection between the fact that while the Inclosure Commissioners were functioning it was possible to get an inclosure, and since the formation of the Board of Agriculture there have only been five?—*Mr. Engholm*: I am not aware of any connection between the two. As to your first question why it is that the inclosure orders have fallen off very considerably since the turn of the century, I can only express a general opinion on that. I think partly it was that the economic desire to inclose was possibly fading throughout the whole of that second half of the century and also during the first half of this century, and as was explained yesterday there was much more of a movement in favour of public access. That meant that owners of the soil were not so keen on obtaining inclosure as the years passed on. I think that is the only explanation that I can give. I do not think, so far as I know, that there was any conscious change of policy or conscious tightening up, but I

would like my colleagues to add to that if they would.—*Mr. Richings*: I think the point about whether there was a change of policy is answered by the fact that only one case was dropped. The fact that only one case was dropped looks as though from 1914 onwards there was a natural disinclination on the part of the private interests themselves to move. I think the general economic situation is probably the only explanation tenable or which can be offered.

180. Does that general economic explanation operate since 1914?—*Mr. Engholm*: You will notice, Sir, that there is a gradual falling off in the figures since the year 1878. They gradually become fewer as the years pass. All I can suggest as to the reasons why private interests did not promote inclosure schemes was that, as the years passed and with the change in the general economic circumstances of the country, private interests did not feel that it was worth while going to the expense and trouble of attempting to get inclosures in the circumstances of those times. That is the only explanation that I can think of.

181. *Dr. Hoskins*: Would you say that the possible explanation is that by 1879 the biggest agricultural depression of the century had set in, that landlords in the 'eighties were conscious of the new depression in farming, and that as far as inclosure was actuated by the desire to improve agricultural production, the motive disappeared in those years? I am suggesting one gets a remarkable falling off, certainly from 1883 onwards, allowing for the operation of a few years of depression.—That may certainly have been a factor.

182. *Chairman*: We are continually hearing about expenditure. Is it possible to get some idea of what the expense of getting a provisional order confirmation Bill through Parliament is?—We can try and give you some idea.

183. It must depend on how many people are opposing and whether it is fought in both Houses and not merely in the House of Commons?—Yes, it does. It is largely a question, I think, of the legal fees involved, as you yourself pointed out, Mr. Chairman. If the order is opposed, the parties concerned have to hire counsel and employ parliamentary agents, of course, apart from any expense that may be involved in the

actual parliamentary procedure. The parties concerned would mainly be concerned with the legal fees, and those legal fees might range in a simple case, I suppose, from anything like £200 to £300 or something of that order. They might even go up to something of the order of £1,000 in a more complicated case. It would depend upon counsel briefed. That is the order of the expenditure. It would depend how long the arguments went on what the actual cost was.

184. Can you give us any idea of the cost if the order is not opposed?—If the order is not opposed I do not think the cost would be very great, but I cannot give you, I am afraid, any sort of definite figure on that.

185. Can you get this from the House of Commons itself?—We can look into it and see what we can find.

186. That would be helpful. That would apply actually to regulation under the Commons Act, 1876?—Yes.

187. Again you notice from Table III there is a fair number of schemes from 1879 and again almost down to the end of the century, although there are gaps, but the last one was 1919?—Yes.

188. *Mr. Floyd*: Is it not bound up with the answer you have had? During a time of agricultural depression landlords find it difficult even to let their farms. When they cannot let their farms they do not go to the expense of trying to obtain more land for letting. May I suggest that was another reason?—If I might come back, Mr. Chairman, to your question about the regulation schemes under the 1876 Act, I think probably one of the reasons why they tailed off towards the end of the century was the fact that the 1899 Act was passed, which provided for regulation schemes by local authorities. You will notice there is almost a transference of regulation schemes from the 1876 column into the 1899 regulation scheme column.

189. *Chairman*: A provisional order is not needed, is it, under the Commons Act, 1899?—No.

190. Then, if we look at Section 194 of the Law of Property Act, 1925, that is what you call enclosure of land, that is enclosure with an 'e'?—It may be either with an 'e' or an 'i', Sir.

191. It can be an inclosure under Section 194?—*Mr. Richings*: If it is a building, for example, that is in effect an inclosure because it prevents the

exercise of rights over that part. For brevity's sake we call the various headings 'inclosure'.

192. There is quite a fair number of inclosures in 1929 to 1931. It tails off badly until 1952. Is there some explanation?—*Mr. Engholm*: This is inclosure under Section 194?

193. Yes.—The period when it tails off was mostly the war period.

194. But does it begin actually in 1932, in the depression?—I think, Sir, possibly the best way I can deal with this will be to give you as briefly as I can the sort of general trend of the interpretation of the 'benefit of the neighbourhood' phrase, which is a very difficult point, as I am sure you will appreciate. First of all, I should say this: I think that, as I understand the position, there have been no court decisions on interpretation of the 'benefit of the neighbourhood' and therefore the interpretation that we have placed on that phrase since it appeared in the statutes has been one which has been based on legal advice within the Department backed up, when necessary, by counsel's opinion. The phrase first appeared, of course, in the 1845 Act in connection with inclosures but it was raised to prime importance after 1876.

195. It was in the preamble to the 1876 Act that the definition appears, but that definition is in substance in Section 27 of the General Inclosure Act, 1845?—I think the difference between the 1876 Act and the 1845 Act is that whereas the 1845 Act merely says that the benefit of the neighbourhood was one of the factors to which Ministers must have regard, the 1876 Act puts it a good deal higher in the sense that it said it has got to be proved to the satisfaction of the Minister there was benefit to the neighbourhood. That has been interpreted as meaning there has got to be some positive benefit to the neighbourhood before approval can be given.

196. May I come back to the 1845 Act? I am afraid it means pretty well reading Section 27, and in those days they did not draft Acts of Parliament as we do now:

'Be it enacted, That if on the Report of the Assistant Commissioner . . .'

Is he now an inspector of the Ministry, or not?—*Mr. Christie*: He would be an official of the Ministry now. The

procedure would probably be that the official must be appointed by the Minister formally to carry out that job.—*Mr. Engholm*: In those days, of course, the official was an official of the Inclosure Commission.

197. The Section continues:

' . . . or after any further Inquiries they shall think necessary in relation thereto, the Commissioners shall be of opinion, having regard to . . .'

then we get what is in effect now the definition of 'benefit of the neighbourhood'—

'the Health, Comfort and Convenience of the Inhabitants of any Cities, Towns, Villages or populous Places in or near any Parish in which the Land proposed to be inclosed, or any Part thereof shall be situate . . .'

That is, it must be in or near the parish?—Yes.

198. That is what is known as the 'benefit of the neighbourhood'. Then it goes on:

[having regard as well to the benefit of the neighbourhood] 'as to the Advantage of the Proprietor of the Land to which such Application shall relate, that the proposed Inclosure shall be expedient'.

In other words, does this mean—I know this is repealed now by the 1876 Act—the Minister and his predecessors were to be satisfied that it was expedient in respect both of the benefit of the neighbourhood and of the private rights?—Yes, the interpretation as I understand it of the 1845 Act was that it was to be expedient taking into account those factors but not putting one into the prime position.

199. That is how I understand it. It then goes on to say that the inclosure order may be made. May we now come to the 1876 Act?—What I was trying to explain, Sir, was this, that the 1876 Act went further, in our view, than the 1845 Act, because it said in the case of inclosure in severalty, as opposed to regulation, an inclosure award should not be made unless it could be proved to the satisfaction of the Commissioners and of Parliament that such inclosure would be to the benefit of the neighbourhood as well as private interests.

200. Where is that?—In the preamble of the Act. It is not in the body

of the Act. But the Ministry was advised that having regard to that preamble, which made it clear the intention was to restrict more closely inclosure in severalty; and having regard to the particular words 'unless it can be proved to the satisfaction of the said Commissioners', the test of the benefit of the neighbourhood which includes the words 'health, comfort and convenience', etc., of the towns must be the prime considerations in deciding whether or not inclosure in severalty could go ahead; and that there must be some proof positive of benefit to the neighbourhood before the Commissioners or the Minister, as he is now, can in fact make a provisional order under the 1876 Act.

201. But the substance of the provisional order is in Section 7, is it not?—Yes.

202. That says that the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and so there is the new obligation. Otherwise it broadly repeats Section 27 of the Inclosure Act of 1845 adding the Commissioners

'shall, with a view to such benefit, insert in any such order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case'.

Then it sets out five things which shall be inserted in the order?—Yes.

203. So the Section itself does not say you must prove in every case there is benefit to the neighbourhood?—No, I would agree that the Section itself does not do that, but the interpretation that has been placed upon that, rightly or wrongly, was that that had got to be read in the light of the words in the preamble. As you yourself remarked, the drafting of Bills was somewhat different in those days and the preambles did perhaps have more significance than in a modern statute. One would have to have regard to the intention expressed in that preamble and those words which draw a distinction between inclosure on the one hand and regulation on the other have got to be taken into account. That meant in the case of inclosure we were advised that we had to pay more regard to the benefit of the neighbourhood and in fact regard that as the positive test. That was

the interpretation placed upon it in the administration of the 1876 Act.

204. May I interrupt at that point? This was put as a legal interpretation, not merely as a statement of the general intention of Parliament as distinct from the intention of making law? Your predecessors put it as a matter of law, not as a matter of policy?—That as I understand it, is the legal advice that was given at that time. That was the way in which Section 7 should be interpreted. In actual practice as I understand the position, in the applying of this particular test under the 1876 Act, fairly strict regard was had to the types of example given in Section 7.

205. That is in relation to the way it was expedient?—That is right.

206. Though actually Section 7 says that these things shall be inserted in the order but not that it shall prevent the order being made?—That is right.

207. Has this interpretation been continued?—I was coming on to that, Sir. As I say, from 1876 down to 1925, when the Law of Property Act was passed, the general position was that the interpretation of the benefit of the neighbourhood was pretty well confined to the sort of thing set out in Section 7. But when the 1925 Act was passed, the scope, of course, of Section 194 was wider than the 1876 Act and brought in other types of common land.

208. We had better explain for the benefit of my colleagues that Section 194 requires the Minister to have regard to the same considerations and, if necessary, hold the same enquiries as directed by the Commons Act, 1876. Is that precisely what you have been doing?—That is correct. Perhaps I can add this? As I mentioned a little earlier on the 1876 Act did, according to our advice, distinguish between inclosure on the one hand and regulation on the other, and whereas in the case of inclosure one has got to regard benefit of the neighbourhood as the prime, positive test, in the case of regulation one merely has to have regard to it as one of the factors in the same way as under the 1845 Act. In applying the 1876 considerations under the 1925 Act, the interpretation that was placed on it was that one had to have regard to the considerations in connection with inclosure and not in connection with regulation, the reason being that the 1925 Act specifically refers to buildings and works which are tech-

nically inclosures with an 'i' as opposed to enclosures with an 'e'. Therefore, the test that was considered applicable under the 1925 Act in considering the benefit of the neighbourhood, was the test of the 1876 Act,—the positive test of benefit of the neighbourhood as applied in connection with inclosure awards. After the 1925 Act, of course, the scope of the proposals was considerably wider: the sort of things to which it was thought justifiable to give consent under the benefit of the neighbourhood test could not be any longer, or were not any longer, confined to the sort of examples given in Section 7 of the 1876 Act. Broadly the result of that was that the interpretation became really more liberal after the 1925 Act than it had been under the 1876 Act. Very briefly the sort of test that was applied was that any official who was looking at this asked himself whether or not there was some positive benefit to the neighbourhood. If he could point to some positive benefit to the neighbourhood, then consent could be given. If, on the other hand, he could not point to some positive benefit to the neighbourhood, even if there were benefit to the commoners themselves, then in accordance with that interpretation it was felt that consent could not be given. That interpretation after the 1925 Act went on with a certain amount of inconsistency, and I am not pretending that these cases, which are a matter of personal judgment, were all decided in the right way from time to time. The approach may have changed somewhat.

209. The governing word is still expediency?—That is right, the governing word is still expediency. I think that after the 1925 Act and the somewhat more liberal attitude to this test that was adopted after it, there was a change somewhere in the 1930s and the test began to be a little more rigorously applied in the light of cases coming forward and legal advice obtained. During the war, perhaps somewhat naturally, most people's thoughts were turned to the question of trying to increase food production, and wherever possible the most liberal interpretation was put upon that test to enable things to be done in the interests of food production. The tendency during the war, therefore, in cases which did arise, was to give the benefit of the doubt, if possible, to the most liberal view of that particular phrase. Immediately after the war there was perhaps a somewhat natural reaction from that more liberal attitude and things

got tightened up again. Perhaps as a result of the change back the interpretation became a little more rigid immediately after the war than it was immediately preceding the war; but that tightening up, perhaps an excessive tightening up immediately after the war, has gradually been changing as the years have passed, and I think that the general line we are taking now is very much the same sort of line as was being taken immediately before the war in the 1930s. That is a broad description—as broad as I can make it—of the different attitudes or approaches to this particular phrase. As I say, it is a matter of approach, a personal judgment in each individual case, and inevitably of course in the light of changes in circumstances—changes in legal advice that may from time to time be given on individual cases—that approach will get slightly changed with the years.

210. We have had a good deal of evidence already, though we have not seen the persons who have given us the evidence yet, on some of the lands which were enclosed,—enclosure, that is, with an 'e'—during the war because you ploughed them up, or ploughed them up and put them down to grass again, there were the fences already up at the end of the war, but you would not make an order to keep them up when the requisitioning period ended?—Yes, there have been one or two cases of that sort. I think that the best way I can explain that is to say that we did feel in those cases where the fences had in fact been erected by the Minister under Defence Regulation Powers that the Minister might perhaps be open to criticism in applying the benefit of the neighbourhood provision to the erection of a fence, and, that having regard to the circumstances in which the fences were erected, we had to be particularly cautious in applying this particular test. In other words, we probably adopted a stricter attitude on those particular cases which had arisen out of wartime works on requisitioned land than we would have done had there been an ordinary application for the erection of a fence on land that had not been requisitioned.

211. Does that mean an application by the owner of the land?—Or the commoners.

212. And if they now make an application to have the fences put back?—It would have to be considered on the merits of the case. All I was saying was that we did feel in these particular cases,

having regard to the circumstances in which the fences were erected, we ought to apply a particularly stringent test.

213. I suppose in fact if the road which goes through is a main road and it is merely a matter of fencing off the main road, you would say it is for the benefit of the neighbourhood?—Probably—if it prevents accidents.

214. Most of these cases seem to relate to the main road passing through the common; the effect of the traffic is damaging to the stock; also there is injury to persons.—Yes, generally we would take the view that that sort of circumstance would probably justify saying that the proposal was for the benefit of the neighbourhood, that is, if one could say the fence was necessary, not for the benefit of the commoners, but for the benefit of preventing accidents on the road.

215. *Professor Stamp*: I interpose here because the argument does not seem to be borne out by the figures given in this Table III, under discussion, where I find broadly speaking there was little or no action during the war. Is not Mr. Engholm referring to action under emergency powers?—I think the answer to that is that in many cases, as a result of the wartime exigencies—shall I put it in this way—there were illegal encroachments on commons to which a blind eye was turned.

216. *Chairman*: It is not the case that a revised interpretation was given?—It was both, Sir. In other words, if there were an application we adopted as liberal an attitude as we could, but in many cases there probably were not applications when there ought to have been, and in the circumstances of the war a blind eye was turned to that.

217. Now, of course, we come to the major point so far as the Commission is concerned, as to whether this 'benefit of the neighbourhood' is a relevant test now. Would you like to say something on that?—On whether it is a relevant test now the position is this, I think, that with the change in circumstances we have taken the view that the neighbourhood phrase ought to be interpreted, from a geographical point of view, very much more widely than the mere locality round about the parish in which the common is situate. The words are 'in or near the parish', as you will remember, Sir. Now the interpretation we have put on that—again, rightly or

wrongly, because there has been no court decision—is that, with the development of motor transport and the making of roads, in fact 'near' ought to be interpreted, not so much in a geographical sense of 'near' in point of distance, but 'near' in the sense of time. That interpretation was perhaps arrived at to some extent as the result of considering the changed attitude to commons from the point of view of public access. In other words, after the 1925 Act, the public recreation aspect of commons was very much to the fore, and it was felt therefore that if commons which had a right of public access to them were accessible to people as the result of motor transport, living some distance away . . .

218. Can I interrupt? Only if there is right of public access?—No, I was explaining the reason for the interpretation that led us to the view the right way to interpret the phrase was 'near' in time as opposed to 'near' in distance. You will see that, having arrived at that interpretation, it obviously had to be applied to all commons, whether or not there was a right of public access, so that the interpretation—rightly or wrongly—is that the 'neighbourhood' must be regarded as something very much wider than the locality round about.

219. There is a populous place called London. What is that near—or is that an impossible question to answer?—It is very difficult to answer that sort of question. There is an example in some of the commons that are in Yorkshire or in the Lake District which are accessible, for example, to the population of Liverpool, Manchester and all those populous places. We should regard it as right and proper, where there was public access, to take into account the interests of ramblers and people of that sort who go on the common, and regard them as being within the 'neighbourhood' provision. If I may mention another case, in the Press recently there was the case of the erection of a wireless mast on a common in Devonshire. It was felt there that it was reasonable to say that was of benefit to the neighbourhood because it would in fact benefit the city of Plymouth which was fairly distant but nevertheless would benefit from the erection of this particular wireless mast. It is very much a matter of interpretation in each case, but the broad approach now is to regard the neighbourhood as being

very much wider—in fact, in some cases, almost nation wide.

220. And in fact it is used not merely where the public have the right of access?—Yes.

221. For example, you would refer to the Lake District as in or near the population of Southern Lancashire?—We should certainly have regard to the fact that the rambler uses the commons.

222. *Sir George Pepler*: The wireless mast is the other way round, is it not? This assumes that wireless is a benefit?—Yes, perhaps there is another difficulty about that. One has got to interpret whether it benefits a neighbourhood or not. For example, a burial ground has been interpreted as being for the benefit of the neighbourhood.

223. Might I ask on that also, where a by-pass would lead traffic away from a big town centre, you would let that go through a common because it was for the benefit of the neighbourhood?—I do not think that would normally arise because, in the case of a by-pass road, it would be a question of compulsory acquisition of the land and so it would not arise under this particular section. It would come up under the special procedure by the Acquisition of Land (Authorisation Procedure) Act of 1946. I do not think a case of that sort has arisen.—*Mr. Richings*: Not that I know of. May I add a comment, drawing attention to an aspect of this which might otherwise escape attention. *Sir George Pepler* asked in connection with this road, if it were to the benefit of the neighbourhood would it be allowed? The procedure is when a proposal is made to the Minister we require the proposer to publish his intention and then we have to consider the objections. In a surprising number of cases, although the proposal is *prima facie* of benefit to the neighbourhood, there are quite a number of valid, even though emotional, objections to the proposal, and we must necessarily refuse consent because we would not regard it as expedient.

224. *Chairman*: Would you not think that, under the Commons Act of 1876, the Minister, or rather the Inclosure Commissioners, were expected to ascertain the benefit to the neighbourhood by reason of, first of all, advertisement, which you have mentioned, but also by reason of the duty under Section 8 of the 1876 Act to give notice to what was

then the urban sanitary authority. I think that has been extended to rural district councils as well as urban district councils now, the local authorities being the people who would tell the Minister or Inclosure Commissioners, whether this building or fence was for the benefit of the neighbourhood.—*Mr. Engholm*: I certainly think that would be one of the ways in which they would have been expected to ascertain the benefit. But I should not have thought they would be confined to that.—*Mr. Richings*: I think, Sir, the urban authorities would speak on behalf of the urban population within their district rather than necessarily take the wide view. One of the differences you may have in mind is there is a necessity to hold a public local inquiry under the 1876 Act. There is not, under Section 194 of the Law of Property Act.

225. The point is, of course, that we are apt to take the benefit of the neighbourhood as being the definition. It is not the definition. It is the health, comfort and convenience of the inhabitants of any cities, towns, villages or populous places in or near any parish in which the land proposed to be inclosed, or any part thereof, may be situate. I am looking at Section 27 of the 1845 Act.—*Mr. Engholm*: It is not quite the definition. I think the phrase says that the benefit of the neighbourhood shall include health, convenience—and whatever the words are—of the towns and populous places, but the 'benefit of the neighbourhood' goes somewhat wider than that actual phrase. In other words, that phrase, 'the health, comfort and convenience of the inhabitants' is not a definition of the benefit of the neighbourhood, but is included within it.

226. I see, because they say that it is included in the 'benefit' expression—that is in the preamble?—That is right.

227. You say in paragraph 66 of the first memorandum it is the Department's practice to obtain the views of the Commons, Open Spaces and Footpaths Preservation Society?—Yes.

228. When did that start?—*Mr. Richings*: A longish time ago—1865 or thereabouts.

229. *Mr. Arnold-Baker*: No doubt the Commons Society would be able to tell us that? *Chairman*: I was wondering when the Ministry started to consult them?—*Mr. Engholm*: We could let

you know. The Commons, Open Spaces and Footpaths Preservation Society are the body which is the main body for commons, particularly for public access. There is no obligation on us to consult them, but as a matter of normal procedure we do tend to consult bodies of that sort which are particularly interested in the problem, so that they have the opportunity of giving their views.

230. *Professor Stamp*: If I may interpose, Sir, I think it is a very old society—if I remember rightly founded in 1867—and for many years it had Sir Laurence Chubb as secretary. Do you think it was due to his efforts that it secured this happy collaboration with a government department?—Possibly.

231. *Chairman*: Do you consult anybody else, apart from the local authorities?—*Mr. Christie*: Yes, Sir. For example, the Ramblers' Association are interested in open spaces and we consult them when they appear to be interested. Of course, one of the strengths of the Commons Society is, I believe, that they are, unofficially, a sort of co-ordinating body for a large range of smaller associations, and it is for that reason that they can really get information for us. They are a mine of information on the local interests in a particular common, and they have this special access to information, which is really something we want to get at ourselves.

232. This relates to Section 194—this particular provision—where you do not have a local enquiry?—Yes.

233. Do you have the same consultations when you have a local enquiry; that is, after the local enquiry has been held does the Minister have consultations with outside bodies?—We would normally notify the Commons Society of the application, before we have come to any conclusion about whether a local enquiry was necessary.

234. Is the local enquiry not always necessary?—No, Sir.

235. It is only if there is somebody objecting?—*Mr. Richings*: With the 1876 Act there is a statutory provision that there shall be an enquiry. With Section 194 of the 1925 Act it depends on the merits of the case.

236. I was thinking in terms of 1876.—There is a statutory provision in the Act that there shall be a public local enquiry.

237. Then the Minister, presumably, relies entirely on the report from the officer who holds the enquiry?—I would not say entirely, Sir. It would be a major factor. If I may say so, where there is a local enquiry held the various societies invariably turn up and give evidence. The consultation takes place more in the type of case where we are not holding a public enquiry, and wish to obtain a general view.

Chairman: I think that clears all my doubts. I do not know whether the Commission have any questions to ask about this.

238. *Mrs. Paton*: It would be a form of consultation with the associations that come to the enquiry when the enquiry is held, would it not?—*Mr. Engholm*: Naturally, anybody can object or put forward views at the enquiry.—*Mr. Richings*: These societies usually see the public announcement of the intention to put up a fence or whatever it is and will write to us, on their own initiative, giving comments. If they do not, we usually say 'Have you seen it? Have you any comments?'

239. It would be expedient for you to do that?—I think so.

240. *Sir George Pepler*: I am still a bit puzzled about the mineral question, because I have come across several cases where the right to dig minerals remains with the owner of the soil, as I understand it. Surely, if he is going to dig a big pit, which if it is wet it will be a lake, he will have an obligation to prevent the public from falling into his pit? I am thinking of the right of access.—Yes. Normally, as I understand it, the position is that the owner of the soil has this right to dig minerals reserved to him.

241. Would that include a right to extract it?—*Mr. Richings*: Yes, to take and get.—*Mr. Engholm*: To take and get, so that he has got to have access to get it.—*Mr. Brewis*: I think this was provided for in Section 194, Sub-Section 4.

242. *Chairman*: Shall I read it? 'This section does not apply to any building or fence erected or work constructed if specially authorised by Act of Parliament or in pursuance of an Act of Parliament or Order having the force of an Act, or if lawfully erected or constructed in connection with the taking or working of minerals in or under any land, to which this section is otherwise

applicable, or to any telegraphic line as defined by the Telegraph Act, 1878 of the Postmaster-General.'—*Mr. Engholm*: That was what I meant by saying that this right is reserved to the owner. He has got the right to extract minerals, and the legislation has continued to recognise that right of the owner. As regards your point about fencing and possible danger to stock, I do not know of any specific provision in relation to commons. I should have thought that would have arisen under the ordinary common law, but we could look into that, if that would be of help to the Commission.

243. *Sir George Pepler*: There is also the question whether 'taking or working' includes processing, because a processing plant, of course, brings in machinery?—Yes.

244. Would that go with the right to take or work?—I would not have thought so.—*Mr. Richings*: I think it is limited to digging up and taking away.

245. I was thinking that your ramblers and other people might object to processing, but not so much to digging.—*Mr. Christie*: Perhaps it might be worthwhile, also, to draw attention to Sub-Section 5 of Section 193, which is a parallel provision to the one you read just now: 'Nothing in this section shall prejudice or affect the right of any person to get and remove mines or minerals, or to let down the surface of the manorial waste or common.'

246. *Chairman*: Is that a limitation on the right of members of the public to have access?—*Mr. Engholm*: There has, I think I am right in saying, been a general reservation of that kind throughout legislation, keeping to the owner of the soil the right to extract minerals from common land.

247. *Professor Stamp*: Could I turn to page 40 of the first memorandum, which refers to recent Acts? I understand that under the Agriculture Act, 1947, there is power to purchase requisitioned land. Under paragraph 81 I note that no purchases of common land have yet been completed under this power, but negotiations are in progress in respect of 22 cases. No new purchases are being undertaken. Are those 22 cases, which are still pending, relative to large tracts of land?—They cover about 3,000 acres of land.

248. *Chairman*: Those are 3,000 of the 20,000?—Of the 20,000 acres of requisitioned land, which were referred to.

249. And this is the provision?—This is the provision, under which the acquisition takes place, and the special Parliamentary procedure applies to it.

250. *Professor Stamp*: And I take it, then, that 'no new purchases are being undertaken' refers to the fact that the remaining 18,000 acres have been looked at and it has been decided to let them go?—Yes. Perhaps I can help the Commission by just explaining very briefly what we did. At the end of the war, and after the passage of the 1947 Act, we considered whether or not the Minister ought to exercise his power of purchase in relation to all requisitioned land. Section 85 applies to all requisitioned land. In the case of commons we looked at those in the same way as other requisitioned land, but we took into account not only the agricultural aspects, but also the views and opinions of the commoners, and of the local inhabitants. What, in fact, we did was to ask the County Agricultural Executive Committees if they would recommend in which cases they thought it was justifiable, on agricultural grounds, to purchase the commons. When the recommendation had been received we arranged a local meeting, although we were not obliged to do so by statute, and advertised it in the press, inviting all persons who claimed to have rights of common and the lord of the manor. Those meetings were held, and an official from the Ministry went down, explained the position to the commoners, explained what were the powers of the Minister, and took the general view of the commoners and all the other persons interested in the land. If there was strong opposition to the purchase of the land, then in most cases the purchase was not proceeded with. If, on the other hand, the commoners and those interested in the land felt that in the national interest it was right to go ahead and purchase the land, then the purchase was proceeded with and, in a number of cases, of course, it was found that in fact there were no people who could substantiate any claim to common rights at all.

251. But I should be right in thinking, should I not, that in the 18,000 acres that it has been decided to give up, there are tracts of some very good agricultural

land which, from the Ministry's point of view, it would have been better to retain in production, but which was dropped because of commoners' opposition? Is that so?—Certainly there were some commons which, looking at it purely from the agricultural point of view, it probably would have been desirable to retain.

252. The other point is that paragraphs 82 and 83 deal with the Town and Country Planning Act, 1947. There have been later Acts in that field and I am wondering whether the Ministry of Agriculture has been consulted fully with regard to the definition and delineation of access land. I am of course taking it that we should get evidence on the meaning and interpretation of the words 'access land' from the Ministry of Housing and Local Government.—On that, Sir, we have been in consultation with the Ministry of Housing and Local Government, and we are consulted on the delineation of access land. But, naturally, our views and advice are only one of the factors that have got to be taken into account.

253. *Chairman*: The land which you are acquiring is vested in the Land Commission?—It is not vested in the Land Commission. It has been placed at the disposal of the Land Commission for management purposes.

254. If it is vested in the Crown, by whom is it administered?—At the moment it is still requisitioned land, because the purchases have not been completed, but when the purchases have been completed it will be vested in the Minister. The Minister will be the owner, but the land is being managed by the Land Commission, on behalf of the Minister, though they are not the legal owners. As you know, it is the policy,

wherever it is sensible, to sell off land when it has been purchased.

255. *Professor Stamp*: Could I ask for a little more information on that point? I think I am right in saying that in lieu of death duties land can be and has been handed over to the government. I am not quite clear as to the procedure. It is handed to the Agricultural Land Commission, and is then managed by the Agricultural Land Service. Is that the position?—I am afraid I am not an expert on this, because it is a Treasury matter but the position is this, that if land is handed over and accepted in lieu of death duties, it is then decided by the government which is the appropriate body to whom it should be entrusted. Some land, which has been acquired in that way, for example, has been handed over to the National Trust, and one or two estates have been handed over to the Ministry of Agriculture.

256. Does that mean that in certain cases the Ministry of Agriculture is actually the lord of the manor, or the owner of the soil and, thereby, exercises the rights we have been discussing?—I believe there are one or two cases where the Minister, in fact, the lord of the manor. There is one particular one that I can think of, which is a very famous one, and that is Laxton in Nottinghamshire, which is in the Minister's ownership.

257. *Chairman*: Thank you very much, Mr. Engholm. We are extremely grateful to you for your very difficult explanation this morning.—If there is anything else we can let the Commission know, we shall be only too pleased to arrange it.

Chairman: Thank you very much. I do not think we shall need you again, at least for some time.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

2

Wednesday, 21st March, 1956

WITNESSES

Ministry of Housing and Local Government



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List of Witnesses

WEDNESDAY, 21st MARCH, 1956

DAME EVELYN SHARP, D.B.E.

Permanent Secretary

MR. PHILIP ALLEN, C.B.

Deputy Secretary

MR. E. H. T. WILTSHIRE, C.B.E.

Assistant Secretary

MR. D. H. PARSONS

Senior Legal Assistant

on behalf of the Ministry of Housing and Local Government

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

Wednesday, 21st March, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.*

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

* Afternoon session only.

Memorandum of Evidence Submitted by The Ministry of Housing and Local Government

I. Introductory

1. The Minister of Housing and Local Government has a general responsibility for the co-ordination of land use derived from his function of 'securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales'.†

2. The Minister is the confirming authority for compulsory purchase orders concerned with a wide range of subjects such as housing, water, sewerage and the provision of open spaces. Where a compulsory purchase order affects land forming part of a common, special provisions apply (see paragraph 9 below).

3. The Minister is also concerned with access by the public for open-air recreation to 'open country' under Part V of the National Parks and Access to the Countryside Act, 1949. The Act requires local planning authorities to make a survey of the open country in their area, and provides machinery whereby the public may be given access as of right to country from which they are, or might be, otherwise excluded. This right has some resemblance to the right of access for 'air and exercise' to which common land is often subject. On much open land the public wander freely, although without any right to do so.

4. The Minister has also a general interest in questions of amenity. Though not charged in any way with responsibility for the management of commons, he would welcome any measures which would improve the amenity of common land which has become derelict.

5. More detailed notes are set out below on the following questions:

- (a) The use of common land for private development.
- (b) The development of common land by local authorities, development corporations and statutory undertakers.
- (c) The securing of access to open country under the National Parks and Access to the Countryside Act, 1949.

II. Use of Common Land for Private Development

6. The existing law, which is above all concerned with the protection of the commoners, has the effect that any modification of any kind, even if it would be

† Section 1, Minister of Town and Country Planning Act, 1943.

in favour of the commoners, is made very difficult; and there are in particular formidable obstacles in the way of inclosure of common land by the private owner (the lord of the manor) whether for agriculture or forestry—neither of which, per se, requires planning permission—or for development, such as the building of a house. Even if inclosure is not entirely barred by statutory provisions it will frequently be barred by the condition that the inclosure must be certified to be for the 'benefit of the neighbourhood', and this generally applies even where the common is a rural one to which the public have no legal rights of access. It would seem clearly right that there should be ample safeguards against the development of common land which is of benefit or enjoyment to the public; but it is for consideration whether the safeguards should be so inflexible as to rule out the development of derelict areas, or areas of which the public make little or no use, which for one reason or another are unsuitable for agriculture or for recreation. Such areas might be suitable, say, for housing, and their use might avoid the taking of land of greater public benefit.

7. Under existing legislation, cases may arise in which a decision to exclude public access may be made by the council of a county or county borough. The consent of the owner and the commoners to the extinction of common rights enables the council to remove the common from the protection of Section 193 or Section 194 of the Law of Property Act, 1925 in regard to access for 'air and exercise' or the erection of fences. It would seem anomalous that where the commoners and the owner consent to the extinguishment of rights, a decision to exclude the public should be within the discretion of a local authority (subject to the approval of the Minister of Agriculture, Fisheries and Food); whereas if there is not unanimity between the owner and the commoners, and inclosure proceedings have to be resorted to, the Minister must be satisfied that the application for inclosure is for the 'benefit of the neighbourhood'.

III. Development of Common Land by Local Authorities, Development Corporations and Statutory Undertakers

8. Where the public authority is the owner of the soil of the common land, then the rights of common, unless they can be purchased, will prevent development by the authority in the same way that they prevent development by the private owner.

9. Where compulsory powers of purchase are used, paragraph 11 of the First Schedule of the Acquisition of Land (Authorisation Procedure) Act, 1946, provides that a compulsory purchase order authorising the purchase of any land forming part of a common shall be subject to special parliamentary procedure unless the Minister of Agriculture is satisfied that a comparable piece of land is being provided in exchange or that the land is required for the widening of an existing highway and the giving of other land in exchange is unnecessary. On such a purchase the right of common will be either transferred to the exchange land, or extinguished under the Land Clauses Acts on payment of the commoners' compensation.

10. There may however remain statutory obstacles which are not removed by the provision of land in exchange. For example, there may be a provision in a local Act that the land shall remain uninclosed. These obstacles may bar development of the land unless the land is acquired for planning purposes under Part IV of the Town and Country Planning Act, 1947, or under the New Towns Act, 1946 (or appropriated to a purpose for which it could be acquired under Section 38 or Section 40 of the Act, of 1947). In that event, there is power to use land forming part of a common for any purpose which conforms with planning control, notwithstanding anything in any enactment. This is provided for by Section 29 of the Town and Country Planning Act, 1944, as set out in the 11th Schedule to the 1947 Act and also as applied by the New Towns Act, 1946. The procedure for acquiring land in such circumstances involves designating it in the development plan for compulsory acquisition, and will normally involve a public local inquiry.

11. It is for consideration whether there are grounds for relaxing somewhat the requirements of paragraph 11 of the First Schedule to the Acquisition of Land (Authorisation Procedure) Act, 1946. At present, if suitable land is not given in

exchange, special parliamentary procedure applies except where an existing highway is being widened; but the question arises whether it is necessary to retain such a safeguard, for example, where the common is being acquired to provide open space.

IV. The securing of Access under the National Parks and Access to the Countryside Act, 1949

12. Part V of the Act provides for a review by local planning authorities of the facilities for public access in their area, gives to them (and the Minister, if necessary) power to improve those facilities by making access agreements or orders, and defines limitations on the rights of owners and the public which flow from the agreement or order. There is also power to acquire land for public access.

13. The process of review includes, first, a survey by these authorities of all 'open country' in their area. 'Open country' is defined (Section 59) as any area appearing to the authority to consist 'wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore)'. Secondly, the authorities must consider whether any action should be taken to secure public access to open country by making access agreements or orders, or by purchase of land. They are ultimately required to publish a map and statement showing the open country and indicating what action, if any, they have taken to secure access to it. The public may make representations about the map and statement to the Minister, and provision is made for local inquiries or hearings. If the Minister considers that further action to secure access should be taken, he may exercise the powers of the authority himself.

14. When each map and statement has reached its final stage, it indicates the extent of 'open country' in the area and the land which the authority has purchased, or over which it has made agreements or orders. The survey itself gives no information as to the extent to which the public have access to the 'open country' shown, other than those parts of it in respect of which the authority has taken action; nor does it show the nature of the rights, if any, which the public enjoy, though this may sometimes be indicated with varying degrees of precision on the ordnance maps used as a basis for the survey. In particular, no additional information is gained by the survey as to the existence of common land. The greater part of common land in rural areas, at least, will be included in the 'open country' shown, though without further differentiation from other open country than may already be noted on the ordnance map.

15. The survey thus provides little information for present purposes, though it affords some information as to public satisfaction or dissatisfaction with available access in each area. The progress of the survey is described in detail in Appendix I. The effect of an access order or agreement is set out in Appendix II.

16. It may be useful to draw a broad comparison between the rights of the public and other rights on common land and on access land. On common land to which Section 193 of the Law of Property Act, 1925 applies (metropolitan, urban and some rural commons) the public has the right of access for air and exercise, subject to certain provisions for the protection of the existing rights and for ensuring good behaviour. On such commons and on any other land on which there were common rights at the time of the commencement of that Act, the provisions of Section 194 of the Act prohibit the erection of fences or buildings without the consent of the Minister of Agriculture and provide that this consent must be given with regard to the 'benefit of the neighbourhood'. Thus if the public have wandered on a common, they have done so as of right on one to which Section 193 applies; and on others, they cannot be fenced out unless the Minister of Agriculture has consented to their exclusion, although the owner of the soil of the common may treat them as trespassers. On access land, the public have the rights under the National Parks Act and the order or agreement referred to in Appendix II, but use of the land for the purposes stated in Section 60 of that Act (for instance, agriculture or forestry or development) is not prevented. The access provisions, therefore, might be helpful in securing access to land, the common rights over which had been extinguished, but would not afford protection against the encroachment on the access land by cultivation or development by the owner.

APPENDIX I

SURVEY OF OPEN COUNTRY UNDER PART V OF THE
NATIONAL PARKS AND ACCESS TO THE
COUNTRYSIDE ACT, 1949

POSITION ON 1.3.1956

1.	Action taken	No. of County Councils
	(1) Statements under S. 62 (2) (a) that in their area there is no open country or no appreciable areas of such land.	8
	(2) Statements under S. 62 (2) (b) that no action is necessary under the Act to secure public access to open country.	40 (also one Park Planning Board)
	(3) Maps prepared under S. 63 (1) showing the approximate extent of open country and what action has been taken for securing access thereto.	3
	(4) Extensions of time granted by the Minister under S. 63 (1) for the preparation of a map under that Section or a statement under S. 62 (2).	10 (also one Park Planning Board)

2. Under Sections 62 (3) and 63 (2) representations may be made to the Minister that action needs to be taken to secure public access to open country or that the county council have not gone far enough in ensuring such access. Representations were made in only one instance about statements under S. 62 (2) (a) and these were subsequently withdrawn. Statements under S. 62 (2) (b) were challenged in nine cases, but the objections were dropped in four cases. In the remaining five the position is as follows:—

County	Objections	Land concerned and action taken
Bedfordshire ...	S. Beds. Preservation Society.	Cooper's Hill, Ampthill R.D. A local inquiry will be held if the representations are not withdrawn.
Leicestershire ...	The local ramblers' association.	Ives Head, Shepshed U.D. After a local inquiry the Minister decided to take no further action.
Lincolnshire ... (Parts of Holland).	Private individuals and district council.	Reclaimed land in East Elloe R.D. The question is whether there will be a right of access to the seashore; the results of the survey of rights of way (Part IV) of the Act are awaited.
Somerset ...	The local ramblers' association.	Seashore from near Weston-super-Mare around Sand Point to Wick St. Lawrence. Negotiations are proceeding with the landowner.
Yorkshire ... (West Riding)	Several ramblers' associations.	Extensive areas of moorland mainly near the western boundary of the county, but also including Thorne Moor and Hatfield Moor near Scunthorpe. A local inquiry has been held. Inspector's report is awaited.

3. Up to 1st March, 1956, ten access agreements, covering some 11,000 acres of moorland (nearly all in Chapel en le Frith R.D.), had been approved by the Minister under Section 64 (1). The Lancashire County Council had submitted for the Minister's confirmation under Section 65 (1) two access orders covering 3,600 acres of moorland in the Trawden area. A local inquiry will be held on 20th March into the objections by water undertakers, farmers and the lessees of the shooting rights. The Staffordshire County Council had made a compulsory purchase order under Section 76 in respect of some 2,000 acres of land in Cannock Chase; this is under consideration.

APPENDIX II

EFFECT OF AN ACCESS AGREEMENT OR ORDER MADE UNDER PART V OF THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

1. An access agreement or order may be made over 'open country'. This is defined to be an area appearing to the authority making the agreement or order to consist wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore).

2. Certain categories of open country are specified as 'excepted land':

- (a) agricultural land, other than such land which is agricultural land by reason only that it affords rough grazing for livestock;
- (b) land comprised in a declaration for the time being in force under subsection (2) of Section 19 of the Act or that subsection as applied by Section 21 of the Act (nature reserves);
- (c) land covered by buildings or the curtilage of such land;
- (d) land used for the purpose of a park, garden or pleasure ground, being land which was so used at the date when the relevant access agreement or order was made;
- (e) land used for the getting of minerals by surface working (including quarrying), land used for the purposes of a railway (including a light railway) or tramway, or land used for the purposes of a golf course, racecourse or aerodrome;
- (f) land (not falling within the foregoing paragraphs of this subsection) covered by works used for the purposes of a statutory undertaking or the curtilage of such land;
- (g) land as respects which development is in course of being carried out which will result in the land becoming such land as is specified in paragraph (c), (e) or (f) above;
- (h) land to which Section 193 of the Law of Property Act, 1925, for the time being applies (that is metropolitan, urban and some rural commons).

3. It will be noted that the owner has considerable liberty to 'except' land by his own action; thus he may inclose the land for cultivation or for any development for which he has permission. The general right of access conferred on the public by an agreement or order does not apply to land while it is excepted.

4. The general right of access is subject to certain conditions:

- (a) it applies only to persons who are on access land for the purpose of open-air recreation, and have entered it without breaking or damaging any wall, fence, hedge or gate.
- (b) they must conform to any special restrictions imposed by the agreement or order.
- (c) they must conform to a number of general restrictions imposed by the Second Schedule to the Act.

Special restrictions

5. An access agreement or order (either of which however is subject to Ministerial approval) may specify restrictions on access, which may include closing land at particular times.

General restrictions

6. Under the Second Schedule, the protection of the access provisions does not apply to persons who:—

- (a) drive or ride any vehicle;
- (b) light any fire or do any act which is likely to cause a fire;
- (c) take or allow to enter or remain, any dog not under proper control;
- (d) wilfully kill, take, molest or disturb any animal, bird or fish or take or injure any eggs or nests;
- (e) bathe in any non-tidal water in contravention of a notice displayed near the water prohibiting bathing, being a notice displayed, and purporting to be displayed, with the approval of the local planning authority;
- (f) engage in any operations of or connected with hunting, shooting, fishing, snaring, taking or destroying of animals, birds or fish, or bring or have any engine, instrument or apparatus used for hunting, shooting, fishing, snaring, taking or destroying animals, birds or fish;
- (g) wilfully damage the land or anything thereon or therein;
- (h) wilfully injure, remove or destroy any plant, shrub, tree or root or any part thereof;
- (i) obstruct the flow of any drain or watercourse, open, shut or otherwise interfere with any sluiceway or other apparatus, break through any hedge, fence or wall, or neglect to shut any gate or to fasten it if any means of so doing is provided;
- (j) affix or write any advertisement, bill, placard or notice;
- (k) deposit any rubbish or leave any litter;
- (l) engage in riotous, disorderly or indecent conduct;
- (m) wantonly disturb, annoy or obstruct any person engaged in any lawful occupation;
- (n) hold any political meeting or deliver any political address; or
- (o) hinder or obstruct any person interested in the land, or any person acting under his authority, in the exercise of any right or power vested in him.

7. The general right of access is that of immunity from being treated as a trespasser, or from incurring any other liability by reason only of entering or being on access land.

8. The owner of access land (or other persons holding interests in it) although not prevented by the Act from doing things upon it which will make it excepted land, must not otherwise do anything which would substantially restrict the area available for public access: and the order or agreement may place restrictions on the stopping up of access to such land. Both kinds of restriction are enforceable by the local planning authority, or in the last resort, by the Courts.

9. The owner is protected both positively and negatively by various provisions. He may be compensated for a depreciation in the value of his interest in consequence of the making of an order, and suitable financial arrangements to the same effect may be made by agreement. He may apply to the Minister of Agriculture to exclude the public on account of exceptional risk of fire, and may remove land from access altogether when it is required for the growing of trees commercially or for amenity purposes. His liability is not increased by virtue of public access under the Act, he is exempt from the consequences of a breach of covenant due to the exercise of the right of access by the public, and public access raises no presumption of the dedication of a highway or the grant of an easement. The Local Planning Authority may make Bye-laws over access land for the preservation of order, the prevention of damage and the securing of good conduct: they may also appoint wardens to keep order on access land.

Examination of Witnesses

DAME EVELYN SHARP, D.B.E.
MR. PHILIP ALLEN, C.B.

MR. E. H. T. WILTSHIRE, C.B.E.
MR. D. H. PARSONS.

on behalf of the Ministry of Housing and Local Government

Called and Examined

258. *Chairman:* Perhaps, Dame Evelyn, it would be best if you were to introduce your colleagues first.—*Dame Evelyn Sharp:* On my right is Mr. Parsons, a legal adviser; on my left Mr. Allen, Deputy Secretary, and beyond him Mr. Wiltshire, an assistant secretary, all of the Ministry of Housing and Local Government.

259. *Chairman:* We are very grateful to the Ministry for having supplied this memorandum. The procedure which I suggest we adopt is to take the memorandum paragraph by paragraph. I shall ask questions on most paragraphs and other members will bring in their questions on each paragraph, so that we shall not go round the table as is sometimes done. First on paragraph 1: there is that blessed word 'co-ordination'. You go on to say the co-ordination of land use is derived from the Minister's function of 'securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land', but you do not tell us, Dame Evelyn, very much about the national policy. Can you give us a general disquisition on what the policy and procedure is in relation to the planning of land, rather the kind of thing which you must have prepared for the Bill of the 1947 Act when it was first submitted to Parliament? Otherwise we have to go through the text of the Act, and it is a little complicated.—Certainly. I must say that I do not think that reading through the Act would give you the picture you want of what actually happens, what we are trying to do through the local planning authorities, and what we succeed in doing. I hesitate over the word 'policy' because when you ask what is the policy in respect to the use and development of land, we are thrown back on the general and virtually meaningless statement that the policy is to secure the best—the right—use of land, and to prevent the wrong use. But the statute gives no guidance as to what is the right use or wrong use, and that is worked out with the planning authorities as we go, and is subject to changes from time to time. I think it would be best if we give

you a description of what in fact a development plan does, what kind of provisions it contains, how it is made and what effect it has. I have worked out a few remarks on that subject.

260. Yes, and possibly there will be questions arising on your statement now that you can answer.—Then if I might make a brief statement on what planning does—it is like this. In the first place all development of land is subject to planning control. That is to say, broadly speaking, that nobody can carry out any building, engineering, mining or other operations in, over or under land, or make any material change in the use of buildings or of land, without the permission of the planning authority. The planning authorities are the county councils and the county borough councils, and there is appeal to the Minister against any refusal of permission for development or against conditions attached to permission. Further, the Minister has very wide powers of intervention, and he can take over the control of development in any particular case or any class of case. As I said earlier, the object of this control is to secure the right use of land, or perhaps more truly, to prevent the wrong use. What is the right or wrong use is left at large by the statute, and that is something which the local planning authorities and the Minister work out as they go along, and on which policy changes from time to time as there are changes in the general economic and social policies of the Government.

Each of these local planning authorities is required to make a development plan for the whole of its area. Before it makes its plan it must carry out a complete survey. That was provided by the Act of 1947 and that process—first a survey and then making the plan—has been going on during these last seven or eight years.

Looking first at the survey, the object of that is to establish the existing use of the land, including buildings, and the probable demands to be made on the land resulting from social and economic

factors; the survey must analyse the various social and economic factors, the existing population in the area and the future curve, industrial trends and so forth. Having made the survey the local planning authority then makes the plan, and that must show—speaking now very broadly—where the authority proposes to allow development, what kinds of development it proposes to allow, and also the main proposals which the authorities themselves propose to carry out.

I will say a little more about the actual content of the plan later; for the moment I will just describe the process. These development plans are subject to the approval of the Minister, and before he approves them they are put on deposit so that anyone affected can object, and normally a public inquiry is held. All, or virtually all, the planning authorities have made plans since the Act of 1947 was passed. About half of those have been approved by the Minister with or without modifications—normally with modifications—and the remainder will be approved in the next year or two. The object of the plan is really to clear the authorities' minds about what they envisage, or what they actually propose, over the next twenty-year period; and it is to provide a guide for the owners and prospective developers when considering what they want to do with their land or perhaps what land they want to buy for certain purposes. It is against the background of these plans that the local planning authorities and the Minister exercise their control over development. In considering whether to allow a particular proposal for development, the planning authority and the Minister must have regard to the provisions of the plan so far as they are material to the particular proposal, and to any other material considerations. I think it is important here to make it clear that the plans produced under the 1947 Act are intentionally very fluid. They are broad in themselves and they are liable to change. It is possible to allow development which conflicts with an approved plan. A local authority must refer to the Minister any proposal which would entail a substantial departure from the approved plan, but the Minister can if he thinks fit allow that departure, though normally if it is a major departure and likely to be of great public interest he would hold a public inquiry before he reached a final decision. If it is a really major change

in the plan, the proper method would be to proceed by way of an amending plan.

Authorities are required to carry out a fresh survey of their areas at least once in every five years, and to submit to the Minister a report on the survey together with proposals for any alterations or additions to the plan which they think are required. We have as yet had very little in the way of amending plans. We are still in the process of finishing the first round of the plans under the Act.

Coming now to what a development plan normally proposes, I think it is probably most convenient for your purposes to consider a county plan. This is submitted in very broad outline. The main plan comes in on a one-inch map, and its chief concern is to allocate areas where development of various kinds will be allowed, and to define the sites of proposed important developments. For example the plan will show the road improvements proposed over the next twenty years, the main areas where development is to be allowed, the areas where mineral working is to be allowed, and proposals for acquisition of land by public authorities for such purposes as school sites, perhaps airfields, open spaces and cemeteries. The county plan will also show that certain areas in main villages and small towns are being covered by town maps. These town maps come in, perhaps concurrently or perhaps later, on a six-inch map, and show in much more detail for an urban or proposed urban area the sort of development that is to be allowed—residential, industrial, commercial; more detail of the road improvements; and the precise proposals of the authority for acquiring land for public purposes. We have a very great many town maps still to come in, though a good many came with the original county plans.

There is perhaps one other content of a plan that I should mention, and that is what we call 'designation'. The planning authority can designate in the plan land proposed for compulsory acquisition for various public purposes—either by themselves, or by other local authorities, or may be by Government departments. The designation of an area merely says that the land will be liable to compulsory acquisition. The ordinary compulsory purchase order has to follow,

and the ordinary procedure of compulsory purchase has to be gone through, notwithstanding that there may have been designation. Perhaps I should say on this too that planning authorities have varied a good deal in their use of designation, some using it a great deal, some using it hardly at all. There is a good deal of criticism of the designation process, for it does, as some people say, lay the dead hand on the land before—perhaps long before—the authority may want to take it; and we have had a good deal of complaint by owners, particularly in urban areas, that it makes land virtually unsaleable and is a process that causes great hardship. The original conception, of course, was that you made the plan, and once and for all you really showed what public authorities meant to do and what development was going to be allowed; but it has the obvious difficulty that the more complete your proposals and the further ahead you make them, the greater the difficulties for owners whose land is threatened by something that is proposed.

Coming nearer home to your subject, the main rural area in the county plan as a rule contains no proposals. It is what we call a 'white' area, which means that it is just left blank on the map. This is an area where no development on any scale is envisaged during the twenty-year period. The plan does not, for example, show a positive intention to preserve land for agriculture or a positive intention to preserve land for public enjoyment—apart, that is, from any proposals to acquire public open space. The essence of our plans is that they are development plans, not preservation plans.

261. *Chairman*: Does that mean that no planning permission is needed for putting up farm buildings or kiosks on the roadside?—No, it does not mean that, but no planning permission is required for agriculture or for forestry. Planning permission is required for agricultural buildings, for kiosks or for anything of that kind, although in fact by orders which the Ministry have made, certain forms of agricultural building have been exempted from planning control. They can be brought back, but at the moment they stand exempt.

262. *Professor Stamp*: Could we clear that point a little further? Am

I right in thinking that any change in agricultural or forestal use is not considered as development?—That is right. I should like to qualify what I have said to the effect that normally a county plan leaves the main rural area blank. I should explain, following up your question, that that means that anybody proposing development must get planning permission within the area, but no positive proposals are shown for the area. There are two exceptions to that. One is that many planning authorities show quite wide areas as areas of special landscape value. What that really means is that in those areas they are going to be particularly strict about any proposals for development that may be made to them. The other qualification is that some planning authorities, notably the councils of the Home Counties, show land for green belt; and the Minister has in fact recently asked all planning authorities to consider whether they do not have a case for showing land for green belt. The object of the green belt provisions, as I am sure you know, is to restrain the outward growth of the great towns. This began with Greater London, and the Metropolitan Green Belt is shown in the plans for Surrey, Kent, Essex, Berkshire, Hertfordshire, etc., the belt varying from seven to ten miles in depth. We may now have plans or amending plans put in to show green belts equally around Birmingham, Manchester, Liverpool, etc., but those are still to come. What the green belt provision means is that no development is going to be allowed in those areas except necessary agricultural building in connection with the agricultural use of the land, or other development of a kind which is consistent with the conception of an open stretch of country. There are usually villages or towns in the green belt, and usually a line—a tight line—will be drawn round those allowing a little development in completion or infilling of the village or town, but it is tightly drawn, and the rest of the land is strictly to be kept as open country.

263. *Chairman*: But there is nothing, for instance, to prevent a private landowner from putting up fences and high walls or something like that? Is that development?—Fences and walls are development, but we have exempted them by the Development Order from requiring planning permission, subject

to certain conditions. But following your point, the idea of the green belt is not primarily public access—in fact not at all public access. For instance, you may have in such a green belt some houses with very large gardens. Quite possibly the Minister would refuse to allow those gardens to be broken up for small development. They may be surrounded by a very high wall; or they may be visible but there is no public access to them. The object is to prevent people living in the belt, to limit the growth of the town, and to say that further development is to go beyond the belt.

I do not know that there is very much more that I want to say about the planning system. But I have so far made no reference to commons. There is perhaps one point that I should mention which does bear directly on commons in the Planning Act, and that is that if land is designated for acquisition in a plan, it can be used for the purpose for which it is designated, whatever that purpose is—public building, public open space—notwithstanding any provision to the contrary in any local or general Act, and that can, of course, have a direct bearing on common land. That does not in any way affect the provisions of paragraph 11 of the First Schedule to the Acquisition of Land Act, 1946. If the land which is to be acquired and used for what it has been designated is common land, there must be alternative land provided or special parliamentary procedure.

264. If a piece of land is designated for building purposes and it happens to be common land in a rural area, and if—leaving aside Section 194 of the Law of Property Act, 1925, the lord of the manor and the commoners get together and agree to use it for building purposes, can that be done?—*Mr. Parsons*: That is not, as I understand it, quite the position. If the common land is designated for compulsory purchase—

265. I was not taking the case of compulsory purchase; but of common land designated for building purposes?—*Dame Evelyn Sharp*: I am sorry; it is these trick words we have in planning. We use the word 'allocated' or 'zoned' when we say that houses or factories can be built there but this has no effect on any legal provision there may be restricting the use of that land.

'Designation' is used to imply that the land is subject to compulsory purchase, and the effect of designation in a plan, as I understand it, is that any provision in an Act, whether local or general, which would otherwise prevent the use of that land for the purpose for which it is designated, can be overcome by the fact that it is designated in the plan and subsequently bought by compulsory purchase.

266. By the fact that it is designated and acquired?—*Acquisition following designation.*

267. *Professor Stamp*: Are we right in thinking that some authorities show their broad intentions by zoning; others go further and within their zoning proposals use designation, but others do not?—I think the two are really quite separate. When the authority is showing the zoning, they are saying, 'This is the kind of development we are prepared to allow anybody to carry out on this particular piece of land'—housing, factories, and so on. Then they say, 'There is certain development which we or some other public authority really intend to carry out and for which we will need land'—a school is the obvious example. They may designate the precise site, and if the Minister approves the designation, that land is then subject to compulsory acquisition, although an order must be made. One of the confusions in the situation is that, as you know, local authorities have a great many powers of compulsory acquisition under Housing Acts, Education Acts etc., which they can operate without any designation. Sometimes they will designate land for acquisition under the plan, even though it was not necessary, as they had other powers of acquisition, because the whole notion originally was that one tried at the outset to show all the proposals of public authorities. Others, I think, have come to the conclusion that designation gives a pack of trouble and they do not use this procedure if they have other powers of acquiring the land; but they can, by designating land for compulsory acquisition in a plan, get powers of compulsory acquisition which they do not have under any other statute. If they designate it and acquisition is really necessary to carry out the purposes of the plan, that designation confers powers of acquisition which do not exist under a general Act, for example for industrial development.

268. Is it not necessary to find out before designation the actual status of the land? Thinking now of common land, might it be designated, and the legal implications ascertained afterwards?—It is not necessary to find out first.

269. *Sir George Pepler*: I believe land has been designated for the working of minerals, which might quite well affect commons. Would you have in the survey any notification that it was common land if it had been designated for mineral working?—On the first point I am surprised that any common land has been designated for mineral working.

270. I believe there is one case.—There may be one case. No public authority in fact can designate for purchase by a private person. They can only designate for acquisition by a public authority; but it is possible that a local authority could designate the land and propose to acquire it compulsorily for disposal to a mineral operator, if he could not get it any other way. They would not, as a matter of law, have to ascertain before they made a designation that the land could in fact be acquired—that there were not common rights or whatever it might be in the way—but as a matter of common sense I would think they would do so.

You asked in the second half of your question whether they say in the survey what common land there is. I would say that generally they do not attempt it. Some planning authorities have written 'common land' on their plans but I think that they are only showing land which is common land by repute. There is no certainty that it really is common land, and very few, I think, do even that much. I was looking just before I came here at the Surrey Plan, knowing that there were commons in Surrey. The Plan simply shows their commons as 'white' land. I looked at Wimbledon Common, and that is shown as 'white' land. They have in their written statement, which accompanies the plan, a general paragraph stating that there are in Surrey so many acres of common land, heathland and rough country. They class it all together; they have not attempted the extraordinarily difficult—perhaps near-impossible—job of sorting out in their survey what is common land; and planning authorities in general do not attempt it.

271. *Professor Stamp*: Is it not rather strange that, in the case you have just quoted where there are Metropolitan and regulated commons of which the use has been carefully laid down by legislation, they should not be separately shown in the survey and plan? I can understand it in the open country where conditions are not known, but you quoted Wimbledon Common and there the status is known and understood. *Sir George Pepler*: Is there not also a special Act for Wimbledon Common?—I think perhaps it is strange. I think there may be some failure here in our own instructions as to notations to be used in plans, because I would certainly think it was useful, where it is known that there are common rights or that development cannot be proposed, so to mark it. It may be that one of the difficulties is that once you start on that game you run into the difficulty that you do not know the full story. You know the ones you are sure of, but you then arrive at the ones you are not so sure of, and you may soon get into difficulties.

272. *Professor Stamp*: Might you not have insisted on putting commons in dark green and not white?—That was never done. There was a good deal of criticism from various people in relation, for instance, to the green belt question that all this rural area was shown as 'white' regardless of whether it was truly land to which it was just not known what was going to happen. On the hilltops of Wales for example nothing was really contemplated as far as one could see; to show them 'white' was sensible. On the other hand there is land which it is intended to preserve at any cost although development is threatened. To show them 'white' too may be misleading. The areas of special landscape value make some contribution, and the green belt areas will now make some more positive contribution, although for their own specific purpose. But it is true that in the rural areas the thing is left pretty negative in general.

273. *Mrs. Paton*: Do I understand that land which actually could contain common land can be designated by a local authority for compulsory purchase later?—I think it could be so. There is nothing in the statute which says land can be designated only if there are no rights attaching to it of this, that or

the other kind. Even if it is common land it can in certain circumstances be purchased. As I have explained, the compulsory acquisition following designation can get rid of any legal obstacle in the way of development proposed, and if alternative land were to be given in exchange which was considered to be satisfactory, or if the acquisition went through the hoops of the special parliamentary procedure, it could go through.

274. But there would be a right to challenge that for those who have common rights?—When the acquisition comes, certainly.

275. *Chairman*: I think possibly we have got into confusion on this question of compulsory acquisition. Could you give us a short statement first on private land which is not subject to common rights, then on land which is subject to common rights?—Let us start with the land which is not subject to common rights, and look at it for the moment apart from questions of planning. Local authorities can buy land compulsorily only if they have statutory power to do so. They have no power to buy land compulsorily just because they think they want it. It must be for housing, a school, public open space, sewers, or some other purpose for which the authority has powers of compulsory acquisition. The particular statute will authorise them to buy the land compulsorily for the specific purpose, subject to confirmation by the Minister of the compulsory purchase order and subject to the procedure laid down in the Acquisition of Land (Authorisation Procedure) Act of 1946. The 1946 Act settles the procedure.

276. *Sir George Pepler*: Are there certain local authorities who have special powers under special Acts for the common good, or does that not apply to compulsory purchase?—There is of course a welter of local Act powers, many of which confer additional rights of compulsory acquisition; but I do not think that any local authority has compulsory power of acquisition 'for the common good'. I think that is only by agreement. I do not think that compulsory acquisition is ever conferred, except under the 1947 Town and Country Planning Act, for purposes at large.

When you come to the 1947 Act an authority can designate land as subject to compulsory acquisition either by them-

selves or by another local authority. This is in Section 5, subsection 2, paragraphs (b) and (c). Under paragraph (b) they can designate as land subject to compulsory acquisition by a Minister, local authority or statutory undertaker any land allocated by the plan for the purposes of any of their functions, whether there exist independent powers of compulsory acquisition or not. For instance, they can designate for school sites, although there are independent powers of compulsory acquisition for this purpose. Under paragraph (c) they can designate as land subject to compulsory acquisition any land which is defined as an area of comprehensive development. The main use of that has been for compulsory acquisition of land damaged by blitz or sometimes by 'blight', as we call it—slum conditions. It involves designation of a complete area for comprehensive redevelopment. Under the same paragraph the local authority can also designate any other land which, in the opinion of the authority, ought to be subject to compulsory acquisition for the purpose of securing its use in the manner proposed by the plan. That is a very wide power of designation for compulsory acquisition. One of the most common uses of it is in respect of land intended for industrial development for which local authorities have no ordinary powers of compulsory acquisition. If the plan proposes that that land should be used for industry, the local authority can then designate it for compulsory acquisition so that they can secure its use in the manner proposed in the plan.

277. *Chairman*: And then do they sell it?—They can either dispose of it to a private developer freehold or leasehold, or they can carry out the development themselves.

278. Can they start an industry themselves?—They do; they build factories. They cannot run an industrial development but they can build a factory and lease it.

279. They are just acquiring, then, compulsorily?—The Planning Act in fact both deepens and widens their powers of compulsory acquisition. If they say in the plan, 'We propose that this land should be used for such and such a purpose'—whether it be a purpose for which powers are already

conferred under any other Acts or whether it merely be a proposed method of developing the land—they can then designate that land to be bought so as to secure its use in the manner proposed by the plan. And if the Minister approves that designation, they then have powers of compulsory acquisition. It only gives them powers; it does not give them the land. After designation they must make a compulsory purchase order and submit it for approval in the ordinary way.

280. *Sir George Pepler*: If it was not in the original development plan, I understand they could bring in an amending plan if urgently necessary so as to secure it?—Section 38 of the Act gives power to authorities to exercise powers of compulsory acquisition in advance of a plan being confirmed because it takes a long time to make a plan, and they could not necessarily wait. But once they have made a plan and it has been confirmed, they can only—by virtue of the Planning Act—buy land which is designated. They cannot come along and say, 'We have had a new idea, and we would like to buy some more land compulsorily'. They must then make an amending plan including the designation before they get the powers of compulsory acquisition.

281. But can they alter the plan?—Always.

282. *Chairman*: This land is acquired, assuming it is not common land or one of the excepted pieces of land, simply by a compulsory purchase order approved by the Minister?—Yes.

283. There is no need to go to Parliament for it?—No.

284. Why is common land treated differently?—Common land is treated differently, as you know, by virtue of the Acquisition of Land (Authorisation Procedure) Act of 1946, paragraph 11 of the First Schedule; and the Planning Act does not, with one exception, affect the limitations on the acquisition of common land. Paragraph 11 of the First Schedule of the 1946 Act applies whether the land is designated or whether it is acquired under other powers. The Planning Act has this one difference: if there are statutory limitations on the use of that land—there may be limitations in local Acts—and if the land has been designated in the Planning

Act, compulsory acquisition subsequently will extinguish those obstacles. But it will not in any way affect the provisions of paragraph 11 of the First Schedule of the 1946 Act.

285. But even if there are no such provisions in operation, is it still necessary to use special parliamentary procedure?—Yes, it is; unless alternative land is provided.

286. Can you tell us the general effect of all this upon common land? That is to say, the difference between ordinary private land and common land in relation to the general problem of planning?—So far as planning is concerned, I really think there is no important difference.

287. Is there not in one respect in the case of land which is not going to be compulsorily acquired? The assumption on which the plan is based is that the land is going to be developed for some purpose, is it not? The position under the law as it stands is that it is extraordinarily difficult for the landlord and the commoners to use common land for purposes of development.—Yes, certainly. Obviously the existence of common rights in land limit the freedom of the planning authority to decide what is the best use of land.

288. They can so decide, can they not, but it just means the landowner is incapable of using it for that particular purpose?—They can decide it would be nice to put houses on the land or anything else, but the decision has no effect unless the obstacles can be got over. There is nothing in the Planning Act which facilitates the use of common land for purposes of development.

289. The only way in which it could be done is by compulsory acquisition, and that would release the land if designated under the Planning Act from all the rights in it, would it not, including the statutory rights?—Yes, once you can achieve compulsory acquisition.

290. But you have to go to Parliament for it using the special parliamentary procedure?—If one could get over that hurdle, compulsory acquisition could be used to bring common land into development. A local authority could buy common land to make it available to private developers to build houses on. This does not flow from the Planning

Act: they can do it under the Housing Act.

291. Does that override the statutory provisions?—No, they have to get over the hurdles.

292. *Professor Stamp*: Could I follow up the Chairman's point on that? Taking the first stage, and that is the determination of zones, would I be right in thinking that the planning authority prepares its map showing land zoned for housing quite independently of the existence or otherwise of common land, or would you say they were influenced from their knowledge that there was common land in determining areas to be zoned for housing?—Certainly. If an authority knows or believes that land is common land, and that it could not be used or acquired for housing except by special parliamentary procedure, they will not show it as available for housing. I can remember only few cases, if any, in which they have attempted to use the special parliamentary procedure in order to make common land available for development; and they will therefore, in preparing their plan, avoid showing proposed development for any land which they believe to be common land.

293. So it does mean in fact, whether they publish it or not, the planning authorities have got to have some idea if not an exact survey of where common land exists?—They certainly acquire through their survey some idea of land which is available for development and land which is not, and they certainly will acquire ideas—if it is only from the oldest inhabitant—that certain land is reputed to be common.

294. Is it not awfully difficult to see how a local authority can develop its zones without having first carried out a survey and determined the existence of common land with such restrictions?—Though they carry out the survey, I do not think they determine the existence of common land, but in the process of their survey they find that certain land is reputed to be common.

295. So they really ought to have a tentative map of common land in most of the counties for that reason? *Mr. Lubbock*: Or would that only become an active question when they were either making or considering making a town map?—Generally speaking, yes. Their county map is in such broad outline. But even when they come to the town

map it is only if they had it in mind to propose development of a certain area, and found themselves checked because they were advised there were or might be common rights there, that they would know it was so. For some of the land they might never have had it in mind to propose development, so they have not asked themselves the question.

296. *Chairman*: The cost of parliamentary procedure being so considerable is, I take it, the reason that they are not prepared to acquire a particular piece of common land; they would rather acquire some other piece?—I have not myself seen a case, though there have been a small number, but it would not be my opinion that it was cost that deterred them if it was a sizeable area of land, particularly in view of the fact that many authorities are very hard pushed to find land where they can propose development without some major disadvantage.* I would have thought myself that it was the belief that nobody would stand for it; that commons are sacred and that they would just have an enormous row on their hands and would not win, should the order be opposed.

297. Even land which is derelict? For example land which has been used for taking gravel or something like that in the past?—If that were the case, if the land had really been rendered derelict and nevertheless was suitable for development of some kind, I would have thought that there they might have plucked up courage to try it. But I do know of two cases—I would rather not mention the names—where housing development was urgently needed and it was said, though I would not like to guarantee that it was true, that there was a very great deal of common land, much of it being heath or scrub and of no use for the public, that the public did not use it or enjoy it, and that if some of this land was taken the public would be in no way disadvantaged, and it would be perfectly suitable land for the development proposed. Nevertheless in neither case was it really ever contemplated by the authority that they should try to take any of the common land, and

* Footnote provided by the Ministry of Housing and Local Government:—During the last ten years, nine orders covering 52 acres have been before Parliament. All were unopposed.

we had the old battle about agricultural land instead.

298. *Professor Stamp*: Is there any truth in the statement that in Bracknell New Town the difficulties of acquisition of common land resulted in the change in the Ministry's policy, and that the town itself slipped on to agricultural land which was privately owned?—No, I do not think so. It is not so much common land, as Crown land and forestry land that adjoins Bracknell. And in fact if I remember rightly, although I would like to check it if you want the information, it was agreed with the Commissioners of Crown Land that some of their land could be taken. Indeed discussions are going on about whether more of the land should be taken, and I think the real point about Bracknell is why did we not put the whole town on that heathland. I think there is something called 'running sand' or something like that, which was one reason why we did not think that the whole town could be built on the heathland.

299. The difficulty of developing on the Bagshott Sand?—It was alleged, rightly or wrongly, that it would be unsatisfactory land for town development.

300. *Sir George Pepler*: Unsafe?—Not so much unsafe as expensive, and bad for gardening and that kind of thing. I do not think that common land arose there.

301. *Chairman*: The phrase which the Ministry of Agriculture officers used before us was that common land was 'frozen' by the legislation of the late nineteenth century. To some extent as I understand you it can be 'melted' or 'unfrozen', but only so far as compulsory acquisition is concerned, by a process which involves going to Parliament through the special parliamentary procedure.—As a matter of law it can in this respect be melted or unfrozen, but, as far as my Department is concerned, as a matter of practice it very seldom is. Apart from the very few cases already mentioned, I believe we had one case where there was a possibility that the common could be got by giving alternative land. But even then I am sure that this expression 'frozen' is the correct expression, because despite the fact that there are methods by which you can escape from the freeze, they are rarely used and I think not only because they may be laborious or expensive, but in

my impression because there is an attitude towards common land which prevents anybody from even starting on them.

302. So that it is almost impossible, apart from legal difficulties, because of public opinion to carry out your policy of making the best use of land?—Yes; that is my impression.

303. *Mr. Floyd*: We know the difficulties there would be under the special parliamentary procedure, but supposing you had a case where you definitely knew you wanted a bit of common land—would it help you over these difficulties if you designated it first? If you actually designated a bit of common land for development, would that simplify your subsequent procedure?—It would only simplify it if there were statutory obstacles.—*Mr. Parsons*: There would have to be compulsory acquisition afterwards.—*Dame Evelyn Sharp*: The only virtue of designation followed by compulsory acquisition, as against straightforward compulsory acquisition is if there happens to be a provision in some Act which is in the way of the use of that land.

304. It would not make it any easier?—Not at all. The only thing you could say is this: that designation is part of the plan; the plan is subject to a public inquiry, it is fought over. If at the end of the process the Minister said, having looked at the whole plan for the development of this area, 'I am satisfied that this particular land ought to be used for the purpose envisaged'—that would do something to move opinion along towards compulsory acquisition.

305. *Professor Alun Roberts*: I was wondering if designation would be likely to be a testing action to see how much degree of resistance there would be to acquisition, if that were the next logical step?—That could happen.

306. And would any cognizance be taken of that by the authority?—Yes, I think the authority, if their designation was approved, would feel that the seal of Government approval had been set on what they proposed to do. But I think we should not labour this designation too much, because I do not think it has been used in any degree for the acquisition of common land.

307. *Chairman*: In fact there is such a general opinion that common land is

land which is devoted to the public, that it is very difficult for a local authority to deal with common land at all?—That is my belief, particularly in the areas where development presses. There is just one general thing I would like to say about the attitude of the Department to the question of common land. It is on very broad and I am afraid to some extent rather ignorant lines, but I think our general approach is this. We would be very alarmed at any proposition that common land which the public use and enjoy, particularly common land in or fairly close to towns, should be easily alienable—if that is the right word to use. We are, as you know, particularly interested in what we call amenity, the enjoyment of air and exercise, in the provision of open space, and the general preservation of the countryside for public enjoyment. We therefore feel that ordinarily the main purpose of common land which is enjoyed and used by the public should be enjoyment and use by the public, and, giving my personal view, I should be alarmed at the notion that it might all be thrown open for the

Minister to say where there should be use and enjoyment or where there need not be use and enjoyment. But at the same time I want to add that, being interested in securing the right use of land and our main worry all the time being the absolute shortage of land for the purposes for which land is required in this country, we do deplore the fact that common land which has little or perhaps no real utility to the public cannot without such great difficulty be used, whether for agriculture or for some form of development.

308. You have so far made no distinction between land to which the public has a right of access and land which it does in fact use though it has no right of access?—No.

309. You mean that in all cases where there is a right or where there is no legal right but it is in fact used for amenity purposes, that it should, generally speaking, be preserved?—That is my personal view, and I think would be the view of any Minister responsible for planning.

(The proceedings were adjourned for a short time.)

310. *Chairman:* I think, apart from access under the National Parks and Access to the Countryside Act, 1949, which really comes a bit later, we have pretty well covered everything in the first section of your memorandum, have we not? Then we come to paragraph 6, where it is emphasised, as the Ministry of Agriculture has already done, that any modification, even if it is in favour of the commoners, is made very difficult by the existing law. There is emphasis at the end of the paragraph:

'It would seem clearly right that there should be ample safeguards against the development of common land which is of benefit or enjoyment to the public; but it is for consideration whether the safeguards should be so inflexible as to rule out the development of derelict areas, or areas of which the public make little or no use, which for one reason or another are unsuitable for agriculture or for recreation.'

On paragraph 7, I would like to have a look at this 'legislation', if we may. This refers, I presume, to Section 193 or Section 194 of the Law of Property Act,

1925. One point which did not seem to me to be quite clear was how the consent of the owner and the commoners to the extinction of common rights enables the council, that is the council of the county or county borough, to remove the common from the protection of Section 193. Section 194 I agree. Is there anything about the council in Section 193?—*Mr. Allen:* It is in subsection (1) paragraph (d) (ii).

311. Yes, you are quite right. Then there is emphasis on the fact that 'it would seem anomalous that where the commoners and the owner consent to the extinguishment of rights, a decision to exclude the public should be within the discretion of the local authority (subject to the approval of the Minister of Agriculture, Fisheries and Food); whereas if there is not unanimity between the owner and the commoners, and inclosure proceedings have to be resorted to, the Minister must be satisfied that the application for inclosure is for the 'benefit of the neighbourhood'. The phrase 'benefit of the neighbourhood' here, is under the 1845 Act, not the 1876 Act?—*Mr. Parsons:* The 1876 Act, as I understand it, on this point substantially

reproduces the provisions of the 1845 Act; the Act deals with both inclosure and regulation.

312. So that there has to be application to the Minister. You are referring to inclosure here with an 'i'?—Certainly, yes. The position is set out very fully in the Ministry of Agriculture, Fisheries and Food's first memorandum, in paragraph 17.

313. It is actually Section 7 of the Commons Act of 1876. Is it not?—Yes.

314. 'In any provisional order', which presumably includes a provisional order for inclosure, as well as a provisional order under Section 3 for the regulation of a common?—Yes. You can, as I understand it, have an inclosure order or a regulation order, or both.

315. So the Minister has to be satisfied and, in any case, it has to be done by provisional order that goes to Parliament?—Yes.

316. *Sir George Pepler*: I was not quite clear what the anomaly was. Is it something we should deal with?—*Dame Evelyn Sharp*: I would think it was for your consideration. I think that what was in our minds about the anomaly was that if the commoners and the owners agree, then it is within the discretion of the local authority under Sections 193 and 194 of the 1925 Act to extinguish the rights, with the approval of the Minister of Agriculture, Fisheries and Food but without any other public consideration; whereas, if they do not agree, whatever be the public view, or the public need, application must be determined by the benefit of the neighbourhood. The two do not seem, to our ideas today at any rate, to fit together very well.

317. *Chairman*: It is more difficult, is it not, where they are not unanimous, than where they are?—I think perhaps our feeling is that it is unfortunate that just because there is no unanimity between the commoners and the owner there is no way of getting the application for inclosure approved, unless it can be certified to be for the benefit of the neighbourhood.

318. In paragraph 8, there is a reference to cases where a public authority is the owner of the soil. Have you any idea how far this is so? How far do public authorities, local authorities, own commons?—*Mr. Wiltshire*:

I should not have thought we had any worthwhile information at all on it.

319. It would not be recorded anywhere?—I do not think so.

320. Is it just that somehow it becomes vested in them, usually by local Act? Is that how it is done?—*Mr. Parsons*: I suppose it is conceivable they might acquire the common under the Open Spaces Act, 1906.—*Dame Evelyn Sharp*: They might; they sometimes have.

321. They have acquired under the Open Spaces Act?—I think so.

322. That would again be by provisional order?—*Mr. Parsons*: I am only saying they could. In that case the lord of the manor would simply transfer his right in the soil to the local authority, who would have powers for managing it, but of course the rights of the common would not be extinguished.

323. This does raise another point. Your Ministry is responsible for town and village greens, is it not, and not the Ministry of Agriculture?—*Dame Evelyn Sharp*: They would be under our Department.

324. There is nothing about them in the memorandum. We have interpreted the word 'common' in the rather general phrasing of the Acquisition of Land Act, 1956, for example, any land which is subject to inclosure, or a town or village green, and so far nobody has told us that anything is wrong with the law relating to town and village greens.—I do not know that we are conscious that there is anything wrong with the law.

Chairman: We really dealt with paragraph 9 this morning, I think. Compulsory purchase has to be done in the case of common land, and almost only in the case of common land, by special parliamentary procedure except where there is land in exchange.

325. *Mr. Floyd*: May I ask whether the Ministry has had actual experience of much land being exchanged? Have you in fact arranged exchanges of land?—*Mr. Parsons*: Not of commons; open spaces, yes.

326. But not of commons?—Not of commons, which is the responsibility of Agriculture, Fisheries and Food.

327. *Chairman*: So that really your Ministry has very little experience of the

use of this provision, because I think you said this morning that so far as the Ministry of Housing and Local Government is concerned very little common land has been acquired by special parliamentary procedure, or by way of exchange and, therefore, in fact it has not been acquired at all to any significant extent?—*Dame Evelyn Sharp*: I think that is so.

328. And that may be because of public agitation, or it may be because of expense—more likely the first than the second?—I would think so. Although the special parliamentary procedure may be a formidable measure, local authorities are not deterred from promoting some provisions in private Bills which are extremely contentious and are very hard fought. The thing that deters a local authority from promoting a private Bill, in my experience, is the belief that there will be such opposition that they will not succeed.

329. *Dame Evelyn*, could you now do for us, with reference to Part IV of your memorandum, what you did with reference to Town and Country Planning this morning, that is tell us exactly what this extremely complicated Act is about?—I would take it that you are primarily interested only in the parts of the Act which are concerned with giving public access to land, and not with those parts which provide for the establishment of national parks.

The object of the access provisions was quite simply to enable the public to walk over moorland, heathland, rough country, and also the sea foreshore, despite the fact that it was and remained in private ownership, where their doing so would do no appreciable harm to agriculture or other interests in the land, and where there was, or was thought to be, a real need or public advantage in their having access to the land. This really originated, I think, in the battle over the Peak District. Before the war there was more than one clash between walkers from Manchester, and other towns close to the Peak District, and the land-owners of the Peak where I think there is a good deal of preservation for shooting. There were one or two historic clashes in the 1930s, between the walkers, who were doing what so many walkers do, just walking over the land, although they had no right to do so, and

the land-owners and keepers, who wanted to keep them out. Also there had for many years been a movement for access to open country, originating, perhaps, in the feeling that the 'land belongs to the people', unless it is being used for some specific purpose, be it agriculture, be it building, and that the people should be entitled to enjoy it. These two things came together when the Government of the day was promoting a National Parks Act, and it was provided in that Act that local planning authorities could either make agreements with land-owners or, failing agreements, make orders which would give the public the right to walk over land—I think it is called in the Act 'open country', which is defined in Section 59 as heathland, moorland, and so forth—where there was no interference with agriculture or other interests of that kind.

When we come to the administration of this provision, as you will see from the memorandum, the planning authorities were required to survey their areas in order to decide whether there was land over which the public could walk, without doing appreciable damage, and from which the public were excluded, perhaps unnecessarily, by the owners of the land. If they found that there was such land then they could try to make agreements, or I think in certain cases there is power to make an order, although there has not been an order yet. It has been accepted as part of the administration of this Act that if by custom and usage the public are walking over land which is in private ownership, and no difficulties or obstacles are being put in their way, then that is all right: the position is not disturbed. The land-lord is not approached for a formal document or an agreement nor, in the last resort, is there need for an order, unless there is a difficulty in the way of enjoyment of the public which it is desired to overcome. There have been land-owners who have said, 'I never have put difficulties in the way of the public walking over my land, while they behave properly, shut the gates and do not scatter broken bottles, and so forth, and I have no intention of so doing. But I do not wish to give them a legal right to that'. While the position remains quite happy between the land-owners and the public, and there is no interference, no action is taken under the Act.

In Appendix I of the memorandum we give details of what has happened under this part of the Act and, as you will see there, the majority of the county councils—this really arises, I think, only in the counties, not in the county boroughs—have told us that they do not think any action is necessary in their counties to secure public access to open country. In other words, they are saying that such open country as they have which the public want to walk over, the public have been allowed to walk over, and no further action, in their opinion, is needed. There are eight county councils who say there is no open country or no appreciable area of open country in their counties, and then there are some whose statements are still to come.

Perhaps it will be useful just to look at the definition of open country in Section 59 of the 1949 Act. Open country is there defined as meaning an area which is 'wholly or predominantly mountain, moor, heath, down, cliff or foreshore'.

330. *Professor Stamp*: May I just clarify two points? Am I right in saying those words were taken precisely from the Access to Mountains Act, which was moribund just before the war?—I believe they were. That was the Act which was sponsored by this movement for the greater access to the countryside.

331. And those words were copied in the National Parks Act?—Yes, I think, they were.

332. Might I just clarify one point which has arisen? You have referred repeatedly, Dame Evelyn, to the owner of the land. Have certain difficulties of granting access to the public arisen in many cases, because the owner is, in fact, a public authority, either a city corporation or a public undertaker, in short a water supply authority, and has there been far more difficulty created by that situation than with actual private ownership?—I think the only owners with whom stones were actually exchanged were private owners, and not public.

333. I seem to remember one city in the north, which was a particular offender in this regard. We had better not mention names.—It is quite true that a number of local authorities who are water undertakers are nervous of giving the public access over their gathering grounds, and there has, as you know,

been a good deal of argument about this. The general attitude now taken is that there is no harm in giving the public access to gathering grounds, subject to certain conditions, or to certain particularly vulnerable points being protected.

334. Is that not a complete change of view, on the part of water supply authorities?—There was a Committee report, which took that line.

335. *Mr. Lubbock*: Is it not that these water undertakers will let the shooting rights over their gathering grounds to private individuals? Will it not then be the private individual's keeper who, in fact, appears as the obstacle to the wanderer? Has that situation arisen?—It may be so. I do not know.

336. *Professor Stamp*: I just wanted to clear up the point of what was implied in ownership, where the ownership may be a public authority?—Yes, certainly. Perhaps the conclusion of what I want to say about access to the open country is that in Part V of the 1949 Act there are powers, and wide powers, to give the public access to country which complies with the definition of open country. In practice, very little use is being made of the formal powers, though I think a good deal of negotiation and discussion has gone on under the shadow of the powers, and has resulted in improved arrangements between owners and the public, without the necessity for a formal agreement or order. But still, in the upshot very few agreements have been. I think we list a few.

337. *Chairman*: You mention ten, covering 11,000 acres, nearly all in Chapel en le Frith rural district.—That is in the Peak District and is, I suppose, in the heart of the area about which there was such feeling before the war.

338. Has there been no application at all for an order?—*Mr. Wiltshire*: It was unnecessary, because the Act says that you must not make an order unless you have attempted to make an agreement, which failed; there has been no sign of an agreement failing so the question of an order has not arisen.

339. Is there any distinction drawn in this Act between common land and other open land?—*Mr. Allen*: In Section 60, sub-section (5), there is a list of excepted land and (h) in that is land to which Section 193 of the Law of Property Act, 1925, applies.

340. That is land to which the public have a right of access?—*Dame Evelyn Sharp*: Most of the exceptions are for land from which it is desired to exclude the public, such as agricultural land which, for one reason or another, has to be inclosed. When one comes to (h) it is because you have already got access that you do not provide another method.

341. Can an order be made under this part of the Act, without going to Parliament about it? Is this simply made by the local authority, and confirmed by the Minister?—Yes.

342. *Sir George Pepler*: The Minister is not required to consult the Ministry of Agriculture?—Whether he is required to or not, he certainly would. I think it is the case, that even if you have made an agreement, if any of the land should subsequently be inclosed for agriculture or forestry, it comes out of the access provisions. So the access provisions do not freeze the position, as common rights do. They merely give you rights of access, while the land remains in its existing state, but if the use of the land is changed it may become excepted land and fall out automatically.

343. *Chairman*: In this process, there is apparently a survey of all open country—you mention this in paragraph 13 of the memorandum, which also defines 'open country.' But in paragraph 14 you say that no additional information is gained by the surveys as to the existence of common land. Would they not have to specify, for example, common land which comes under Section 193, and which is not excepted land?—If they were going to make agreements, they would obviously have to because it is excepted land and agreements cannot affect it. If however in the process of surveying open land, whatever be the law which applies to it, they find that in their opinion there is no land to which the public desire, or might desire, access and to which access is being denied them, then they go no further. They think that no agreements are necessary and custom and usage provide a satisfactory situation. They do not have to go further and examine the nature of the land.

344. They do not, in fact, make any report under Section 61, as to the land to which people have access? There is no survey which is reported to the Minister?

345. *Professor Stamp*: In the middle of paragraph 13 you say: 'They are ultimately required to publish a map and statement showing the open country.' Do I take it that the only local planning authorities, who have forwarded a map under Section 63 (1) are the Isle of Wight, Staffordshire and Hampshire. They are the only counties that have done that to date?—That is right, yes.

346. And others have simply declared, instead of providing that map, that they have no open country?—No, only eight have declared that they have no open country.

347. Huntingdonshire, Isle of Ely and so on?—There are forty of them who have made a statement that no action is necessary to secure access to open country. That is the common result of the survey.

348. Presumably those forty counties are taking it for granted that the public have right of access to existing common land?—Not necessarily common land—it means that the public have such access as they want to exercise to what open country there is. As you will see in the note in paragraph 2 of Appendix I, we say that when those forty authorities published their statements that no action was necessary, which means that the public is enjoying as much right as it wants to such open country as there is in that area, the statements were challenged, as the Act provides for, in nine cases—people saying, 'It is not true. There is open country to which we desire access and do not have it comfortably and conveniently.' In four cases the objections were dropped. Then we give the position in the remaining five cases. In two cases we had a local inquiry.

349. That presumably means that your Ministry is satisfied with public right of access by custom, not necessarily by right?—Yes, for the purposes of this Act.

350. *Chairman*: I think the answer to Professor Stamp's question is contained in the language of Section 63 (1), is it not? It reads 'Within one year after completion of their review . . . a local planning authority shall, unless they have forwarded to the Minister a statement under sub-section (2) of the last foregoing sub-section, prepare and forward to the Minister a map . . . Paragraph (b) of that sub-section (2) contains a provision that if the local

authority are of opinion that 'no such action needs to be taken . . . the local planning authority shall as soon as may be after completion of the review forward to the Minister a statement of their opinion and publish a notice setting out the contents of their statement.' So that if they have, in fact, reported to the Ministry that no action needs to be taken, there is no need for them having made a survey to publish a map under paragraph (h), sub-section (1) of Section 63. Is that not right?—*Mr. Wiltshire*: Yes, there is then no need to publish a map.

351. *Professor Stamp*: Does it mean that the Ministry has presumed, as the public presumes, that it has a right of access to common land, which it has not in fact got in law? Or would the Ministry not know this? Would the local authority just report that the people have such access?—*Dame Evelyn Sharp*: I think the process in lay language is that the local authority is expected to examine its area and say, 'Is there open country here, for which there is some demand for public access, and from which the public are being excluded, or from which they are being chased by keepers and on which they are having a difficult time?' The majority of local planning authorities, having made that survey, have come to the conclusion that there is no trouble in their area; over such open country as there is, the public is exercising as much access as it wishes to exercise. They must however make a public statement that that is their opinion of the situation and, therefore, they are going to take no action. If nobody makes any comment at all we accept the position. In other words, we are not interested in securing access if we have no evidence of local demand for greater access than *de facto* exists. If we have evidence of local demand for greater access, then we may take action.

352. Is it not a most interesting position that those counties where you mentioned there was a clash, namely the West Riding of Yorkshire, the Lakes Park Planning Board area, Westmorland, and so on, are apparently quite satisfied that the position is such that no action needs to be taken?—I did not suggest that there was any clash in the Lakes or in the West Riding. The only clash of which I am aware was in the Peak District in Derbyshire.

353. I was thinking of the part of the Peak District around Sheffield, which is in the West Riding.—There may have been a clash there. The only one of which I am aware, which was a historic clash, was in the Peak District in Derbyshire.

354. The Derbyshire authority has been allowed an extension of time, I notice.—*Sir George Pepler*: Is the Lakes Park Planning Board quite satisfied? Have no representations been made?—It is my experience as a walker in the Lakes that nobody attempts to stop you.

355. *Mr. Lubbock*: Is that why the Planning Board there thought it was best to leave well alone?—Yes.

356. *Chairman*: There is one point on paragraph 1, which we did not raise, and that is how the Minister does, in fact, co-ordinate land use.—All the development plans of the planning authorities come to us and, in deciding whether to modify the plans or to approve them without modification, the Minister looks at the adjoining plans and at the general demands being made upon the land. Perhaps a classic example of co-ordination of land use is the impact of Greater London far beyond its borders. Provision is being made by New Towns, and in other ways, to accommodate the surplus population and employment which Greater London has no room to accommodate within its own boundaries. The Minister must see that if a group of London authorities are proposing to provide for less population and less employment in the process of redevelopment than they at present accommodate, compensating provision is made in other areas. Of course, the real method by which the Minister does this is by discussion and consultation with the planning authorities, before they ever put their plans up. The Metropolitan Green Belt affects five or six counties and that was, in fact, all discussed informally with the counties—where there should be a belt, and where it should run—well before they ever submitted their plans to the Minister, so that when those plans arrived they were co-ordinated.

357. I am afraid I was not thinking in terms of planning at that moment, because the term used in the Act of 1943 is very much wider than development: it is 'use and development' and I thought that this refers not merely to the

use of land for development purposes, but also for agricultural purposes, and that it was the responsibility of your Minister to co-ordinate with the Ministry of Agriculture.—Not for securing the better development of land for agriculture. That is not any responsibility of ours. We do co-ordinate with them in relation to the preservation or the protection of land at present used for agriculture, which they do not wish to see alienated from agriculture. It is our function, in fact, to co-ordinate all Government policies, and to resolve the conflicts between the different policies, such as there might be between minerals and agriculture, as best we can. By contact with Departments with interests in land, we try to formulate general policies which we disseminate to the planning authorities, so that they may incorporate them in their plans, and observe them in the planning control, in a co-ordinated way.

358. Are you consulted about 'benefit of the neighbourhood' when some question arises under the 1876 Commons Act?—I should think not. I suppose we were on Hessay Tor, but normally, no.

359. Is the local planning authority consulted?—I think one would have to ask the Ministry of Agriculture. I am afraid I do not know.

360. *Professor Stamp*: I do not think, either in the memorandum or for that matter in the course of the oral evidence, there has been brought out the actual work of co-ordination between, particularly, the Ministry of Housing and Local Government on the one hand, and the Ministry of Agriculture on the other. I think, Dame Evelyn, what is known as the 'urban fence' procedure really solves that difficulty, whereby, between the two Ministries a line is drawn round every town. Within that 'urban fence' it is a matter for your Ministry, is it not, to carry out co-ordination and development; whereas, the Ministry of Agriculture would ask to be consulted about every development outside that line? It is, presumably, an inter-departmental procedure, but it does work very well. I think that is the answer, is it not?—I am grateful for your encomiums. That is the theory.

361. *Sir George Pepler*: The Service Departments come into it, too, do they not?—All Departments which are

making demands on land normally go to the planning authority direct, and not to us, unless it is some very major demand, in which case they will come to us first, and we may discuss the thing with the local planning authority.

362. *Chairman*: May I take up another point? I expect the Ministry has had a copy of the survey report of the Cambridge County Planning Department on the common land in Cambridge. It is the most informative document we have had so far, because it really tells us the details of a small county with a small amount of common land. Are there any others of these which we have not seen?—I am told we have just learned you had this document, and we managed to get a copy this morning; we have not had time to study it yet. I do not think we are aware that any other planning authority is attempting anything so comprehensive as that. I would not guarantee that, because planning authorities are carrying out research and detailed surveys into particular problems, of which we are unaware, and it may be that officers in the Department in the regions are aware, as indeed they must be, of a great deal more than we are. We could try and find that out, and see if anything like this is known to be going on anywhere.

363. It may be due to the fact that there is a University in Cambridge.—And also there is a very active planning officer.

364. *Professor Stamp*: The preface says this report had its origin in the survey undertaken as part of the general survey carried out in connection with the preparation of the county development plan. But I take it that it was not actually submitted as part of the county development plan?—I understand it was not ready by the time they sent in their survey and, of course, no special survey like that would have to form part of a statutory survey. Nor indeed, as far as I can see, is it an essential part of the information you require before you make a plan—at least, a plan as conceived at present under the 1947 Act.

365. *Chairman*: I wonder if I may take an actual case from this survey report, which you probably know about. It concerns the Backs at Cambridge. The map facing page 12 actually gives St. John's, Trinity Hall, King's and Queens'.

There is a little green patch where Queens' is, right in the left-hand corner. I gather from the story that the land opposite Trinity, which is not mentioned, was in fact common land which was inclosed under a local Act by Trinity. The land beside King's was also common land, which has been inclosed. Then there is the common land next to Queens' College, immediately below, which is still common land and used for grazing. The whole of that area from St. John's College down to King's College is looked after extremely well by the Colleges, and is open to members of the public, except on the 1st January in each year when the colleges all close their gates in order not to create rights of way. But then comes that scruffy bit which is common land, and I wondered if that was a good example of the difficulties of improving commons. All the land is, in fact, open space. It is used by members of the public. But it happens that you have got private owners in two cases and common land in the third case. Perhaps you do not know the land well enough?—I do not know it well enough, but from your description it might be a very good example of one of the difficulties which is felt about common land by my Department as well as by the Ministry of Agriculture that the existence of common rights may add to the difficulties of properly maintaining an area which the public do use and enjoy.

366. Even though, in fact, Cambridge looks after its commons much better, I imagine, than most, because it has special statutory powers?—Yes.

367. *Mr. Morris*: Is any record kept of agricultural land compulsorily acquired, year by year?—Not by my Department. The Ministry of Agriculture have certain records about the land which is lost to agriculture, for one reason or another, every year. But we keep no records. We keep records of the amount of land compulsorily acquired, but we do not distinguish between land which was agricultural and land which was used for some other purpose.

368. And there is no differentiation between urban and rural areas, or anything like that?—A total record of compulsory acquisitions is kept for every local authority area, I think. We print statistics in our annual reports of compulsory acquisitions, but we do not dis-

tinguish between the kinds of land before they were acquired.

369. *Professor Stamp*: I think the difficulty lies in the words 'compulsorily acquisition'. The areas so concerned are infinitesimal in proportion to the total amount alienated from agriculture to other uses, are they not?—Yes.

370. Compulsory acquisition forms a very small part of the total change?—Yes.

371. I am right, am I not, in thinking that in future your Ministry is hoping to collect much more comprehensive statistics than in the past, as to the changeover of land to agricultural and other uses?—I do not think so unless you mean that we are analysing the development plans; that is perfectly true. It is not true if you mean we are having some specific inquiry into day by day conversion to other uses. I do not know how much the analysis will tell us, but we are doing it.

372. *Chairman*: May I just raise one more general issue, really to clarify my mind as to the general nature of the discussion that we have been having. Is it true to say that the use of land was not the responsibility of the central government at all, until the end of the 18th Century; that then the central government came in only because of the conflict between the peasant and the landlord, who was inclosing his land, and in the course of solving that conflict they introduced the concept of what came to be called 'benefit of the public' and so the common land then got frozen—to use a phrase of the Ministry of Agriculture—during the course of 19th Century legislation? All the legislation which we have been dealing with today is 20th Century legislation, is it not?—Yes.

373. So that this modern concept of regulating the use of the land in the national interest has, apparently, come in on top of existing legislation which froze the land in the interests of the commoners?—Yes.

374. I was thinking of it possibly in rather more general terms, that the change in the 20th Century may have been due to the fact that the population in the course of those 100 or 150 years has multiplied six or eight times from the early part of the 19th Century, and the amount of land available has remained the same. Therefore, your

Ministry was created and given fairly considerable powers in order that the land might be made more useful to the members of the public, generally. Am I generalising too much?—I do not think so. I think there is just one addition that I would like to make, and that is a reference to the development of planning legislation and the attitude to planning in the 20th Century. Planning began as part of the effort to improve the living conditions of the town worker. It owed a great deal to the Garden City movement. In its early days it was confined to urban areas, and its prime objects were to promote, encourage and, indeed, insist on more open development, greener development, more open spaces, and a pleasanter urban environment. Then, between the wars, in the 1920s, planning spread to the whole country and became more and more interested in the preservation of the countryside as, with the motor-car and so on, the countryside was increasingly threatened—the countryside and the seaside. With the last war, and since the last war, planning has become very much more involved in economic considerations, in the struggle to survive, the preservation of agricultural land, the exploitation of mineral resources, and so on. We have in these 50 years come a very long way in the idea of what planning is for.

375. Would you agree that the law relating to commons, which was made in the 19th Century is, in many respects, inconsistent with the general concepts on which this modern planning legislation is based?—It is inconsistent with the planning concept, as we now have it, which is that we need to make the best possible use of all our natural resources, of which land is perhaps the most valuable and perhaps the most limited.

(The witnesses withdrew.)

376. *Professor Stamp*: Is it not true to say that the conception of planning development for the country as a whole really stems from the Scott Report of 1942, and the establishment or the setting up of a separate Ministry as recommended by it in the following year, 1943? Also, that the 1947 Act was the first one which really extended planning to cover the whole country on other than a limited basis?—To my mind it does not give quite the right picture to say that a particular concept stemmed from a particular committee report, valuable though that committee report was. I think the important thing is to realise that the thing was growing under forces which the committee report analysed and canalised, but the pressures were there. The present attitude to planning is now an essential part of the economic policies of the country, although it originated, I think, wholly in social policies.

377. *Chairman*: The point I was really getting at, which I think summarises my whole attitude at the moment, is that we are concerned with 4 per cent of all the land in the country, as far as we can see, and it is just that 4 per cent of which the best possible use is not being made.—Of some of that 4 per cent that may be true, but we are devoted to the notion that some of that 4 per cent of common land is being put to the best possible use.

378. *Sir George Pepler*: I hope Professor Stamp will forgive me, but if he mentions the Scott Report, I might mention the Barlow Commission.—I hope we will not get on to that.

Chairman: Thank you very much indeed, Dame Evelyn. We are most grateful to you.

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

3

*Wednesday, 18th April, 1956
and Thursday, 3rd May, 1956*

WITNESSES

Commons, Open Spaces and Footpaths Preservation Society



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List of Witnesses

WEDNESDAY, 18th APRIL, 1956 AND THURSDAY, 3rd MAY, 1956

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Vice-Chairman

MR. HUMPHREY BAKER, O.B.E., M.A.

Consultant

MR. W. H. WILLIAMS, M.A., LL.B.

Secretary

on behalf of the Commons, Open Spaces and Footpaths Preservation Society.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

AT 26, SUSSEX PLACE, LONDON, N.W.1

Wednesday, 18th April, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
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SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence submitted by the Commons, Open Spaces and Footpaths Preservation Society

In this Memorandum, the expression 'common' means land referred to in Section 193 of the Law of Property Act, 1925, or a town or village green.*

General

1. The Society welcomes the appointment of the Royal Commission and, indeed, was one of the first bodies to press the Minister of Agriculture to have a commission appointed. We are in complete agreement with the task of the Commission in so far as we feel that changes and consolidation in the law are necessary to benefit those holding rights over commons and the public.

2. The Society was founded in 1865, and its early aims were, first, to resist attempts to enclose and sell common lands in and around London for building, and later, to stop the wholesale enclosure of commons all over the country. To this end it has fought for the preservation of common rights in its continued campaign to secure access by the public and the beauty of the countryside.

3. The position with regard to commons today, in the country as a whole, is rather as it was then, and, in some respects, is even more dangerous than in 1865, with the present heavy and conflicting demands for land use, the growth of towns and more intensive farming methods.

4. Then, as now, the rights of the commoners and access by the public were complementary, since it is the existence of the commoners' rights which maintains the legal status of commons, as land which cannot be enclosed except under strict conditions imposed by statute. Originally, the existence of common rights was a prerequisite for public access; commons could not be enclosed by the lord of the manor against commoners, and, therefore, were physically open to de facto access by the public. Similarly, it is the exercise of those rights, such as grazing animals and cutting back fern and undergrowth, which keeps the commons open and accessible by the public.

* See Qs. 380-382.

† See Qs. 393-394.

5. Any large or indiscriminate reduction in the area of commons, causing exclusion of the public, would be a serious retrograde step from the protected position which, largely through the Society's efforts, they have achieved, and from their function of affording open land for public access and enjoyment. The provision of public access and grazing grounds is, indeed, at present, the most important of their functions, and, in planning for their better use, it is necessary to ensure priority for these functions.

6. It is true that only certain legal types of commons afford public access as a legal right. In considering what amending legislation is necessary to achieve the better use of all commons, it must be conceded at the start that, as the law stands at present, the rather archaic manorial system has been the main safeguard by which the public can retain a general customary use. The latter is in some cases more valuable in the pattern of our national life (and certainly is enjoyed by a larger section of the community) than are the more specific uses of the lords of the manors and their commoners. It has been acquiesced in for over a century by those having legal rights over commons.

7. The Society, therefore, submits that any changes in the law which ignored this general use would be quite unrealistic. It fulfils the open air needs of the people, whether the latter come from the neighbouring villages or towns, or from the distant cities. It is clear that it forms a necessary factor in considering any improvement in the various particular uses to which any common may be put.

8. Whether or not any common is fully grazed, it generally has trees, some undergrowth, bracken, gorse or heather. These contribute greatly to the landscape beauty of the common for the public, while providing as well the means of satisfying the commoners' rights of turbary and estovers. They serve, also, to preserve the rarer forms of wild life, which cannot flourish in the hedgeless and highly cultivated areas of modern agricultural land.

9. Proposals for the better use of any common should start with the following purposes:—

Providing machinery for resolving more rapidly any possible conflict between those interested in and using the common;

An active scheme, whereby all interests can both contribute and benefit without fear of the project failing from lack of co-operation;

A more accurate recording of boundaries and rights, on which such a scheme can be fairly planned.

10. In the Society's view, these purposes would be best secured by a definite and positive management scheme for each particular common, the scheme being specially directed in each case to fulfilling the particular needs of the common concerned, for its better management.

11. The scheme would provide machinery to ensure that agricultural grants e.g. under the Hill Farming Act, and for drainage and grants from the Exchequer and local authorities (towards such purposes as improvement of access, the control of parking, games pitches and wardens) are made applicable to the special needs and conditions of commons no less resolutely than to land in individual or public occupation, and to ensure that there is appropriate organisation for maintaining the objective in respect of which such grants are made. There would be a managing body which would deal with the particular uses to which the common was to be put, control the income and expenditure and report annually to the Minister of Agriculture.

Past difficulties and their cure

12. Some of the causes of the past neglect of commons consist in such periods of agricultural decay as that which obtained when the Society first became active in its preservation of commons. At that time, lords of the manor were concerned mainly with inclosure, and were not interested in maintaining their manor courts. These courts had earlier been invaluable in adjusting the rights of pasturage so as to obtain the maximum benefit from the land for the right holders. Their neglect resulted in a similar state of neglect and waste on the commons themselves.

13. At the same time, came the awakening sense of many enlightened people of the use which commons could and should provide for the enjoyment and refreshment of the public. As a result, various forms of regulation of public access were devised, with control by conservators or local authorities, and attention became far more concentrated on controlling abuses of this extended use than on the betterment of the pasturage as an integral part of a well planned use.

14. Within the present century, two great wars threw the emphasis in farming on to growing crops in fields or allotments, rather than on cattle-raising. Throughout this century, the country's agricultural policy has been turned away from the improvement of commoners' stock or the co-operative management of pasture to the more pressing needs of other farming activities.

15. In two other respects, commons have suffered a greater handicap than other grazing lands. Mixed herds must create more difficulties in the way of control of disease than are experienced with isolated herds. It was inevitable, in the early days of T.T. regulation, that communal grazing should not be favoured. Thus, the stock which was turned out on commons has deteriorated in quality and quantity.

16. This particular segregation however should be only a passing phase in the policy of hygiene in cattle, which should be concerned more with wider immunity than with local isolation. In the New Forest, the commoners have agreed that the common land shall be a T.T. area, so that only T.T. cattle are turned out. This agreement indicates that the means exist of making regulations for the control of infection; such regulations are practical and mutually observed where there is machinery, as in the New Forest, for the commoners jointly to manage their interests as a main use of the common.

17. The second handicap has been the difficulty, under the existing law, for the commoners to put up protective fences, which are needed more than ever today, with the increased traffic on the roads, to safeguard their stock and to prevent the stock from creating dangers to road users. In the past, this difficulty was overcome, as it still is on the Continent by the employment of cowherds and shepherds. It is still worth considering whether, on our larger commons, and, especially, hill pastures, some such control is not still possible by co-operative action.

18. Generally speaking, the absence of fencing, both for the control of pasturage and protection of cattle from straying off the common, has been the most serious drawback in modern practice to the commoner, compared with other farmers. In past tradition, fencing on commons was intimately bound up, in the minds of the commoners and of the public, with 'inclosure', or appropriation of the common to the use of the lord of the manor or the principal commoners. This appropriation in time might create a freehold title in the person who carried it out. Before the days of large-scale maps, country planning and the registration of title, a physical joining of landmarks was often used to institute a private right over land. It was, therefore, natural that the strongest objection should be made by the public and the commoners to any fencing, whatever the motive for its erection, which would prevent their free use of the land. Consequently, fencing on commons came to be generally forbidden, and only allowable by the Minister of Agriculture, if it was clearly for the benefit of the neighbourhood, as required by the Commons Act, 1876, as a prerequisite to the Minister's approval.

19. In the Society's opinion, if the law were amended, it would be practicable to lay down, by a map of its boundaries, the exact area of any common, and, by a register of right holders, the nature and extent of rights over it.

20. A practical scheme would provide for the manner in which a common was to be used, and, when this certainty had been achieved, fencing for safeguarding and segregating stock could be freely allowed. What is required is some means whereby a common can be improved, as a common, for the benefit of right holders, whether by fencing for the regeneration as pasture, or by cultivation on a small scale, while, at the same time, securing the interests of the public in the land as an open space. The scheme which authorised the fencing would clearly indicate that it neither imposed upon nor interfered with reasonable use of the common by all interested parties, including the public. Equally clearly it would exclude any interpretation that legally there had been inclosure.

21. In other directions, also, there is scope for securing the better use of commons in their special function of providing public recreation. Management by conservators or regulating authorities under local acts or schemes has had insufficient means to cope with such matters as preventing or clearing up litter, employing wardens and providing car parks. All these problems arise from the greater pressure of population and increased transport facilities, resulting in greater public use. Provision of means for the upkeep of the open parts is a pressing need for local authorities and managing bodies. Where there is an active scheme, the means might be found from some parts of the common being let as private games pitches, or for parts being used for fenced pastures or agricultural land, from which financial means would arise for the upkeep of the rest, but such special uses should be definitely subservient to the better management of the rest for its main purposes.

Present Rights

22. Hitherto, the use of commons by the lord of the manor has been governed by the consideration of what he could take for his own gain without infringing the rights of the commoners. His principal concern has been to see, merely, that his projects left a sufficiency of pasture to satisfy the commoners' rights. His main interests have been in the soil, in taking minerals and timber trees; sometimes, he has also shared in the grazing, as he is, in general, entitled to do. Greater use of commons by the public has led to legislation (see Law of Property Act, 1925, S. 194), securing that the lord cannot use the common as his own freehold land merely by buying out the commoners, as under the inclosure procedure.

23. Turning to the rights of the commoners, a right of common may be defined as 'a right which one or more persons may have to take or use some portion of what another man's soil naturally produces'. They are fully set out in the publications listed in Appendix D. The most important right is that of pasture, although rights of estovers, turbary and pannage are still exercised, and are of value on some commons, such as the New Forest and the Forest of Dean and the north country hill commons. All that need be said here of the commoner's right of pasture is that it is strictly limited in quantity by stint, or by being confined to the number of beasts which the commoner's own land can support through the winter from its stored produce. Under such schemes as the Society contemplates, such rights could be adjusted for mutual benefit so as best to meet a balanced stocking of the pasture, or to suit any temporary fencing off of some parts, hereby applying under modern conditions a procedure originally covered by the old manorial courts.

24. Both the lord of the manor and commoners holding one-third of the total value of rights on a common have the power to veto a regulation scheme under the Commons Act, 1899, although the Act specifically leaves their rights in the land unaffected. It is submitted that this power of veto should now be removed, as was recommended by the Select Committee on Commons in 1913.

25. The public have a legal right of access to all Metropolitan Commons and regulated commons, also to commons and manorial waste in boroughs and urban districts, and to all such rural commons as have been brought under Section 193 of the Law of Property Act, 1925. Over all other commons, the long enjoyed custom of public access should, in the Society's view, now receive recognition as though it were a legal right.

26. Under such schemes as the Society proposes, the existing rights of the lord of the manor, the commoners and the public would not normally be curtailed, although with the consent of the parties concerned, the scheme could make special provisions, such as those for temporary suspension of these rights over parts of the common, or the admission, on terms, of non-commoners to participate. The Society has in mind that a scheme could include certain uses which are not covered at present by those rights, nor permitted under existing legislation, e.g., arable cultivation, fencing and the exclusive use of games pitches and golf courses.

New Schemes

27. The Society does not favour a nation-wide, uniform system to be imposed for the better use of commons. Each common requires its own treatment, best suited to its extent, quality and position. Attempts were made in the Commons

Act, 1876, to allocate parts of commons to individual interests, but this strict division of commons into watertight compartments has not proved to be a satisfactory procedure. It is lengthy and complicated, and its main result is that the common is enclosed*, and ceases to be a common. The Metropolitan Commons Acts and the Commons Act, 1899, also provided a form of scheme, but this was concerned entirely with the management of public access, and did not cover any means of co-operation between right holders themselves, or between right holders and the regulating authority, to make the common a going concern.

28. A new and more practical type of scheme is now required, under which participants may be ready to spend money on the improvement of the common, with a view to taking profits from this improvement. Such a scheme might well be agreed in outline by the various interests, and be introduced, as a first step, in all cases where it was asked for and was really needed to improve or extend existing use. In some cases, there is no need at present to disturb the status quo, especially where a common is controlled under its own Act of Parliament.

29. The details of such a scheme as the Society proposes are given in Appendix A. Broadly speaking, it would cover the ascertaining of rights and boundaries, and the publication and approval of the printed scheme after due publicity. It would state and allocate the uses to which the common is to be put, and provide for a managing body to be set up. It would make financial provisions, and lay down that a report and accounts be given annually to the Minister. Once legislation has provided the means and incentive for better management, effort should be directed to the more urgent cases. Such effort should not be dissipated immediately over too large a field, where it would require an enormous personnel and be without any clear indication of the purpose to be fulfilled.

Responsibility of the Minister of Agriculture

30. The Society feels that the Minister of Agriculture has, hitherto, successfully taken the responsibility for protecting the public interest in commons; this runs side by side with his usual responsibility for agriculture. It is important, therefore, that there should be laid fairly and squarely on him the responsibility of approving schemes, or initiating them himself. He would give priority for schemes which are urgently required, and those which have been agreed between interested parties, and would prefer existing uses to new uses, hitherto not normally possible under existing legislation. In this way every common eventually would be covered by a scheme.

Objections to the Scheme.

31. Any objection to the scheme within a reasonable time would be considered by the Minister. It should, however, be open to the Minister to allow subsequently entries on the register of right holders, where it can be shown that there was a fair claim at the date of the scheme, and that hardship would result from the omission.

Financial Provisions

32. In financing schemes, the principle, in so far as money is to be found by those participating in the scheme, should be that those who benefit by the scheme should pay towards the upkeep of the common, in general in proportion to the enhancement of their interests by the scheme. Finance should not consist of 'buying out' some interests, in order to obtain undue advantages for the remainder, or to prevent the first-named interests from sabotaging the betterment proposed. It should be a general ploughing back of resources in the general well-being of the common, the contribution of each participant depending on his 'stake' in the common. The managing body must ensure that there is fair contribution as well as share taking, and that a general continuous purpose in management is maintained.

33. Commons at present cannot, in the absence of a live body of commoners, take advantage of such grants as are made under the Hill Farming and Livestock Rearing Acts. Under new schemes, it would be possible to obtain such grants for commons. In so far as particular commons are much frequented by the public who come from a distance, and have to be looked after by a managing body without sufficient

* See Qs. 393-394

funds, financial aid should be provided from the county rate, or a grant from the central government, possibly from local or central open space funds.

Provision for Public Access to Commons under Schemes

34. In deciding the extent to which public access is to be secured by each new scheme, the guiding principle should be that no part of a common is to be excluded temporarily from public access until the Minister is satisfied that there is adequate and permanent provision for this access for the benefit of the growing population, which, with its greater mobility by car and coach, comes from afar to visit and enjoy the open land which commons provide. Today no common is too remote to be visited. It must be emphasised that all 'open country' (under the National Parks and Access to the Countryside Act, 1949) other than commons is liable at any time to become 'excepted land' where the public may not go.

35. Such a condition of 'excepted land' provides a limitation on access quite unsuitable to commons, where the public have always enjoyed liberty to roam, under existing usage. On commons it is necessary that any restriction of such access in favour of other purposes should be temporary or conditional. The Society recognises that, under the National Parks Act, public access to any open country was made subservient to agricultural needs, and we emphasise the important safeguard which made obligatory a survey of open space needs. There is a great distinction between common land and other 'open country' which was relevant to the framing of the Act; nevertheless the Society would point out how valuable is a survey by the local authority, under Part V of the Act, in assessing the importance of public access when framing a management scheme. The sort of map which would be of great assistance in the consideration of proposals for schemes is contained in the Survey Report A, Part 12, 'National Parks conservation and Amenity Areas', prepared for the East Sussex County Council by its Planning Officer.

Special Uses of Commons

36. *Fencing* is required on some commons for tree planting, in shelter belts or to enhance the beauty of the landscape, for better grazing and for safety, and the Society's views as to it may be summarised as follows:—The Society is not opposed to reasonable fencing for such purposes where there is a scheme in operation which covers these uses, and where fencing is provided. We feel, however, that fencing on commons should not, in general, be permanent; it should be movable (possibly, electric fencing would be appropriate), and be provided with means of public passage, such as gates and stiles and notices saying that the land is a common. The Society is of the opinion that where fencing is not ancillary to a scheme it should be excluded from the scheme and a separate application should be made to the Minister in all circumstances, and be subject to procedure similar to that now in force under Section 194 of the Law of Property Act, 1925, and like provisions in other Acts.

37. *Mineral Workings*: Where mineral working is covered by a scheme it should be only on terms that appropriate restoration is carried out, and the working should not be too extensive, so as to prevent reasonable public access to the common, or to diminish unduly the rights of the other participants. In so far as any workings restrict materially the exercise of rights and access by the public, it is only just that some part of the profits from the workings be paid into the general fund for the upkeep of the whole common.

38. *Tree Planting*: The present legal position is that, although the lord of the manor is entitled to the timber trees on a common, he may not, without the consent of the Minister, fence in new plantations, nor may he make new plantations without leaving a sufficiency of pasture for the commoners. The Society's views on tree planting on commons are set out in Appendix C. Tree planting should make no serious interference either with common pasturage or public access, and the plantations should remain part of the common, subject to temporary exclusion when the trees are young.

39. *Ploughing*: Where ploughing is to be part of a rotation, under which the land will be down to pasture from time to time, a scheme would allow ploughing of a fixed maximum proportion of the whole area of the common. Any subsequent

proposal to exceed this maximum would require an application to the Minister to amend the scheme.

40. *Buildings*: Where buildings are to be ancillary to the scheme, power to erect them should be granted in the scheme, and be subject to control of design. Where there is a proposal to erect buildings which are not to be ancillary to the main uses of the scheme, this should not be embodied in the scheme. It would have to be the subject of a separate application as under the present law.

40A. *Use by Service Departments*: On a number of commons, use by the Service Departments is at present a matter of arrangement with the conservators or other managing body. Such use is liable to rapid variation, and is, therefore, not suitable for inclusion in a scheme. In the past, where there has been proper consultation with interested parties, a satisfactory accommodation of all interests has proved possible. In the general framing of schemes, elasticity for such accommodation should be provided, thus obviating, for both sides, the necessity of formal requisition. Where the Crown decides to acquire a common under the Defence Acts, the Society would like to secure that, if and when the land is no longer required for the purposes for which it was taken, and before it is disposed of for other purposes, the Crown should consider the return of the land to its original purpose. We recognise that the lord of the manor and the commoners will have been compensated for loss of rights at the time of acquisition, but it may well be that, in the best public interest, an arrangement similar to the original scheme should be revived.

41. *To Sum up*: The Society's view with regard to the above special uses (except use by Service Departments) is that, where they are to be on such a scale or for such a purpose as makes them incompatible with a scheme which would provide a reasonable amount of public access, they should be excluded from the scheme and be subject to special application to the Minister. The safeguards under the existing law should be retained (a list of the relevant statutes is given in Appendix E), although the Society is not opposed to any means of making the procedure embodying those safeguards cheaper and quicker, if this can be achieved without impairing the efficacy of the safeguards themselves. Where the special uses are on such a scale and for such a purpose as to be compatible with a scheme providing public access, they could be specifically permitted by inclusion in the scheme.

Commons Subject at Present to a Scheme

42. The Minister might receive proposals for a new scheme even where there is an existing scheme in force under present legislation. In the Society's view, it will be unnecessary generally to disturb, by introducing new schemes, the existing position with regard to such large commons and forests as the New Forest and Epping Forest, which are controlled under their own Acts, and also with regard to metropolitan commons, but the Metropolitan Commons Acts and the schemes made thereunder should be amended in the following respects:—

To enable conservators under new schemes to erect pavilions and other structures in connection with the use of the land for public recreation, also temporary enclosures for tree planting, at present prohibited under the Metropolitan Commons Acts.

To enable under new schemes land given by way of exchange (when part of the original common is taken for any purpose outside the scheme) to be made subject to the scheme, and the part given up to be excluded from it. At present this is impossible without an amending local act.

Control of Public Access under New Schemes

43. The Commons Act, 1899, provides for the regulation of commons as open spaces. The Commons Regulations made thereunder are a useful model for regulating public use. Under a new scheme, the Minister should be able to allow fresh clauses and byelaws, in order to cover such modern nuisances as the flying of model aeroplanes and the indiscriminate parking of cars. An alternative would be by limitations such as those under Section 193 of the Law of Property Act, 1925.

In either case, it is considered best that all prohibitions should be made under the new scheme, and not some under one act and some under another, as is the case with some commons today.

Proposals for New Legislation

44. In the Society's view, it would be best if new legislation were recommended, to consist of one consolidating and amending act, containing all the new law applicable to land which is a common, with fresh provisions to implement the Society's suggestions as to schemes.

SUMMARY OF RECOMMENDATIONS

	<i>Paragraph</i>
1. New and practical management schemes for commons to be imposed	10, 11, 28
2. The Minister of Agriculture to be the responsible Minister for making new schemes (priority for agreed schemes)	30
3. Map of common and register of right holders to be prepared	19 and Appendix A
4. Scheme to be published and Minister to hear objections	31 and Appendix A
5. Schemes to cover uses, fencing, the appointment of a managing body and finance, with an annual report and accounts to be submitted to the Minister	29, 36 and Appendix A
6. Absolute power to veto schemes to be removed	24
7. Financial provisions to include grants and upkeep of common as a whole	32, 33 and Appendix A
8. Schemes to provide for additional sources of finance for regulating authority	21
9. Use by the public of common to be included in scheme	34
10. Public access to be controlled	43
11. Scheme to provide for improvement works	Appendix A
12. Schemes may include provision for mineral workings on a reasonable scale	37
13. Also tree planting and ploughing if public are not to be excluded to a great extent nor permanently	38, 39
14. Also buildings, where these are ancillary to the purpose of the scheme ...	40
15. Provisions made under 12, 13 and 14 to be such as not to involve or presuppose legal inclosure	
16. Scheme to be embodied in statutory order	Appendix A
17. Minister to review existing schemes	42 and Appendix A
18. New legislation to be comprehensive	44

APPENDIX A

Procedure Relevant to Making Schemes

Proposals to the Minister: Whether or not any scheme* under existing legislation is in existence in respect of a common, any person, or the District Land Commissioner, or the County Agricultural Executive Committee, or the Local Authority, or the National Parks Commission, or a body on behalf of the public, should be entitled to make to the Minister proposals for its better use for such purposes as pasture, a public open space, recreation, agriculture, tree planting or mineral working. On receiving these proposals, if they appear reasonable to the Minister, he should make appropriate enquiries, in order to ascertain the nature and extent of the various interests in the common.

* Where a common is subject to an existing scheme which has a charitable element, or is set out in an Inclosure Award (e.g. as a Poor's Common), the consent of the Charity Commission to a new scheme, but not Parliamentary sanction, would be necessary.

Making and Publication of Scheme, Map and Register of Right Holders: Consequent upon this enquiry, the Minister would decide what matters arising out of the proposals should be embodied in the scheme. He would then draft the scheme and publish it, together with a map showing the exact boundaries of the common, as alleged to exist, and a register of commoners, or others having legal rights over the land. He would hold a public local inquiry into the scheme.

Managing Body: The scheme should contain provisions as to the body which will manage the common. In cases of commons already regulated, this might be the existing regulating authority. In cases of other commons, representatives of local interests and other bodies should be included, so as to ensure that the common is appropriately managed to the best advantage of all who are concerned with it, and of the population as a whole. The managing body should meet not less than so many times a year, and should submit an annual statement of accounts and report to the Minister.

Uses: The various uses to which the common may be put would be laid down in the scheme, which should be a fair and appropriate allocation to provide for the various needs, as part of the project for making a common a self-supporting entity, as far as possible. The Minister should consider particularly the desirability of leaving part of the common unimproved, as a piece of natural country for its landscape value, and as a habitat for wild plant and animal life, but the public should not be excluded from any part of this, except in special circumstances. Works such as drains, water supply and cattle grids would be provided for under the scheme.

Financial Provisions: The scheme should also contain financial provisions, ensuring the following:—

The managing body to be competent to receive grants from the central government for improvements, as under the Hill Farming and Livestock Rearing Acts, or from central or local open space funds;

Initial payments by participants in the scheme for bringing the land into a good state for the purpose for which it is to be used;

Compensation to participants in cases of hardship;

The keeping and sending to the Minister of annual accounts;

Any profits accruing from the management scheme should be divided fairly in proportion to the interests contributing thereto, but only after the necessary costs of management have been met.

Wardens and Byelaws: The scheme could provide, in appropriate cases, for the appointment of Wardens and the imposition of byelaws for maintaining public order on the part of the common subject to public access.

Consultations: The National Parks Commission should be consulted by the Minister before schemes over commons in a National Park or A.O.N.B.* are effected, and the National Parks Commission itself should have power to make proposals affecting such commons. In all cases, the Minister should consult the local authorities and bodies representing the public before making a scheme.

Scheme, Map and Register of Right Holders to be comprised in a Statutory Order: When the scheme, map and register have been finally settled, the Minister should publish them in the form of a statutory order, which should state the date of the scheme coming into force. This will have the effect that anyone who is not on the register of right holders will not be entitled to participate in the scheme, but will not prevent him from establishing his right to the satisfaction of the Minister, if and when the revision of the scheme seems to the Minister to be necessary. It will also have the effect of providing *prima facie* evidence of the boundaries of the common where cases of alleged encroachment arise.

* See Q. 677.

Revision of Scheme and Byelaws: The Minister should have power to revise and alter new schemes where it appears necessary, the procedure following that applicable to the making of schemes.

Power of the Minister himself to initiate a Scheme: Where, within a reasonable time, no proposals have been submitted to the Minister in respect of any land which the Minister has ground for believing to be a common, he should himself make and publish proposals and, if practicable, make a scheme as above.

APPENDIX B

Examples illustrating points in the Society's Memorandum

A. PARAGRAPH 27—Example of a common which has (recently) been the subject of a draft order under the Commons Act, 1876.

Allendale Commons, Northumberland

Here a huge area (23,000 acres) of stinted pasture had been the subject of 'proposed enclosure since 1936, but only recently was the draft Provisional Order published. Following the public inquiry, at which the Society was represented, we stressed to the Minister of Agriculture that permanent provisions for the benefit of the neighbourhood, as required by the 1876 Act, e.g. recreation allotments, should now be replaced by provisions in the draft Provisional Order for the benefit of the public generally, and we suggested that, if the public were given such access to the lands to be enclosed, as the public would have if an access order or agreement had been made under the National Parks Act, 1949, that would be an ample provision in that regard. We made the further point, however, that the Order should provide that only a small proportion of the land should be made 'excepted land' or be afforested. The Provisional Order contains provision for public access as though an access order or agreement is in force, but does not safeguard against the danger of all the land being afforested or 'excepted', and the Minister seems to find it difficult to do this, within the archaic framework of the 1876 Act. Without such provision, the public is no better off than it would have been if the land had not been a common.

B. PARAGRAPH 42—Example of a Metropolitan Common where regulation is hampered under existing Metropolitan Commons Acts and schemes.

Banstead, Surrey

At Banstead, Surrey, it was desired to build a cricket pavilion on this Metropolitan Common, which is regulated by the Metropolitan Commons (Banstead) Supplemental Act, 1893. The local Act (as it had to, in following the provisions of the Metropolitan Commons Acts) prohibited any building on the common. The general Metropolitan Commons Acts should be altered to permit this. On the same common arose the problem of making land which was to be added to the common by way of exchange for part taken for road widening works subject to the local Act. This is, at present, impossible without a new local Act.

C. PARAGRAPH 18—Use of Commons for agricultural purposes hampered by existing law.

Berkhamsted, Hudnall and Whitchurch Commons, Herts.

These commons are owned by the National Trust, Hudnall Common having been bought by public subscriptions raised by the Society for the purpose of being maintained as a public open space. Before the war, there was some grazing, and the land was open for public access. Parts of the commons were requisitioned for cultivation during the war, and improvements were made. The Minister is now anxious to hand back the land to the commoners, having reseeded it to grass. Owing to the impossibility of carrying on grazing, the Trust, commoners and local people have asked the Minister to continue the requisition, as the rest of the land has been covered with heavy overgrowth, rendering public access very difficult,

and it is feared that the same position would obtain with regard to the now requisitioned parts, if they were released. Under existing law, cultivation by the Trust and the commoners cannot continue after release by the Ministry.

D. PARAGRAPH 8 and APPENDIX A (Uses)—Examples of a Common where provision is needed for ensuring that part of the Common is left in its wild state.

(a) *Flordon Common, Norfolk*

This common, in its wild state, supported many rare flora. Recently, a farmer took possession of part of it, and drained and ploughed it, and the Rural District Council have been asked to intervene, purchase the manorial rights, and let part of the common to the farmer for cultivation, leaving part of it open for grazing, and keep part as a sort of small nature reserve. This seems to the Society a reasonable way of dealing with the common, but it involves such processes as the purchase of the manorial rights, the exclusion of part of the common, which is to be cultivated, from the provisions of Section 194 of the Law of Property Act, the granting of licences to non-commoners to graze, and to the naturalists for a conservation area. All these processes could be combined simply in such a new scheme as the Society advocates.

(b) *Tollard Green, Wiltshire*

Here the common had been cultivated under requisition, except a fringe of wooded land on two sides of it, which had not been requisitioned. The lord of the manor wished to continue to cultivate the requisitioned portion after derequisition. This involved buying out the commoners' rights, and obtaining a resolution of the County Council, confirmed by the Minister, that Section 194 of the Law of Property Act should not apply to this part of the common, and consequently that it should still apply to the wooded fringe, which was to be kept planted as an amenity for the public. All this could have been effected under the Society's scheme more simply without the extinguishment of common rights consequent procedure.

E. PARAGRAPHS 18 and 36—Commons where attempts have been made to improve grazing conditions by fencing in parts of the common, especially from the road.

(a) *Ditchling Common, Sussex*

The manorial rights were bought by a company who wished to improve the grazing and, for this purpose, they cultivated part of the land, reseeded it and erected a fence alongside the road, to prevent sheep straying on to the main Brighton Road. This might have been the subject of consent by the Minister of Agriculture under Section 194, but the Minister felt he could not allow it, as it did not benefit the neighbourhood. The company also applied Section 193 of the Law of Property Act to the common, giving the public a right of access. The limitations granted by the Minister under the Section were objected to, and a Local Inquiry and much correspondence with the Society, the Minister and local authorities were involved over all these matters. The Society's scheme would make a simpler single procedure for dealing with these problems.

(b) *Dorney Common, Bucks.*

Colonel Palmer, the lord of the manor, and a member of the Society, is giving the Commission a full report on the proposals for cattle grids and fences with stiles for the improvement of the grazing on this well-frequented common.

(c) *Tenbury Common, Worcs.*

Here the commoners are an active body, and the common is regulated by the Rural District Council under a scheme under the Commons Act, 1899. After derequisitioning the commoners wanted to use the whole area of the common (except for a few odd corners) for grazing, and, for this purpose, to fence it off from the road, improve the water supply and drainage. The fencing proposal will be at variance with the terms of the Regulation Scheme, and a simple means is required for resolving much conflict between the commoners and the regulating authority.

F. PARAGRAPH 21—Example of a Common where a broader basis for byelaws under Scheme is required.

Dartford Heath, Kent

This is subject to a scheme under the Commons Act, 1899, and the Council wishes to control such activities as the flying of model aeroplanes, cycling, firing of air guns and indiscriminate car parking. It is considered that these activities cannot be prevented by byelaws under the existing scheme, which follows the model scheme under the Commons Regulations, 1935, and recourse must be had to other general acts for the necessary byelaws. This will involve byelaws from various sources being imposed, and the whole position would be tidied up if the power to make byelaws for commons were given to the Minister of Agriculture only, and were so wide as to enable him to deal with all foreseeable nuisances under such a scheme as the Society favours.

G. PARAGRAPHS 9-11—Example of a live body of commoners making such satisfactory arrangements for managing the common after derequisition that the Minister of Agriculture decided to relinquish it rather than acquire it under the Agriculture Act, 1947, and extinguish the common rights.

Hatherleigh Moor, Devon

The commoners undertook to compile and keep a register of Potboilers; to make rules and regulations for supervising the exercise of grazing rights on Hatherleigh Moor; to appoint and fix the remuneration for a moor-man; to collect subscriptions towards the upkeep of the Moor; to elect a Chairman and make standing orders; and to co-opt as a member of the Committee a representative of the Devon Agricultural Executive Committee. The commoners also stressed the importance of the common rights, there being no other common land, and the recreational value of the Moor to the public. The case illustrates that a lively managing body, with a definite scheme, can make a success of a common, even where the uses are to be limited to grazing and public access.

H. PARAGRAPHS 28 and 42—Example of a common where use for agriculture and afforestation has required a local Act.

Torrington, Devon

The commons are regulated by a local Act, which imposes on conservators the duty of keeping the commons unenclosed. The proposals of the conservators for some agricultural use and tree planting, in order to keep up the rest of the common, are reasonable, and are such as could be included in such a scheme as the Society contemplates, but, under existing law, a new Act is necessary.

I. PARAGRAPH 21—Example of a common much frequented by the public from afar, where money has to be spent on clearing up the common afterwards.

Slaugham Common, E. Sussex.

APPENDIX C

Society's Views on Tree Planting (Extract from Journal for May 1953).

INFORMAL JOINT COMMITTEE OF THE C.P.R.E. AND THE FORESTRY COMMISSION

AFFORESTATION OF COMMONS

Memorandum by Commons Preservation Society

The preservation of commons as places where commoners can freely exercise their rights of grazing (inter alia) and the public may wander at will has been one of the principal functions of the Society since its inception in 1865, and the special protection afforded to commons as open spaces in all the principal legislation between 1876 and the present day has shown that public opinion is behind the wish to preserve the integrity of this land as far as possible. The kind of

encroachment which the Society fought in its earliest struggles was mainly that for building, but the afforestation of large areas of common land involves, in only a slightly lesser degree, fencing and the exclusion of the commoners and the public. Also, from a purely aesthetic point of view, the concentrated afforestation of such picturesque places of public resort may well result in a great loss of beauty and general amenity.

This legislation recognises the principle that, whereas on freehold land new public rights cannot be imposed or increased without compensation for the consequent burden on the owner, on common land the owner of the soil is not to increase his interest or make it more exclusive without adequate compensation to the public for the loss of their user.

The planting of timber on a large scale, except in some Crown Forests, has not in the past been one of the land uses which seriously affected common lands, although on many commons from time immemorial the rights of felling have been a matter of customary adjustment between the owner of the soil and the commoners. In more recent times, with the decrease in the exercise of commoners' grazing rights, tree planting has shown itself more and more as a *de facto* increase in the rights of the owner of the soil with a corresponding curtailment of access for the public.

In a somewhat perfunctory manner, the National Parks Act deals with the respective needs, on ordinary freehold land, of forestry and the public interest of access, wild life preservation and amenity with which this Society is concerned on the accepted principle of compensation for rights foregone, but no provision exists for any such adjustment in the case of common lands.

Whereas the Society may accept that in freehold land public access cannot take precedence over agriculture or forestry without compensation to the owner, it must, on the same principle, oppose any diminution of the protection which the existing law of commons affords to access and amenity and any increase in the rights of the owner of the soil, unless, at the same time, adequate safeguards for the existing public user are provided. At present the retention of the status of land as a common is the one fundamental safeguard to the accepted principle that the public have a customary interest in such land, and this interest must remain protected by safeguards at least as strong as those which control other changes of land use.

Within this principle it remains to be seen that the balance of these opposite interests is kept, and how far the conflict between them can be resolved within the present law; also how far modern requirements of forestry or access could best be provided for by new legislation.

From the point of view of public open spaces, commons fall broadly into three legal categories:

- (1) Commons regulated under the 1876 or 1899 Commons Acts, which are virtually public walks or recreation grounds fully controlled by the Local Authority. On such commons planting should be governed solely by amenity considerations—to screen eyesores or to replace groups of trees for shade or the embellishment of the scenery.
- (2) Commons subject to S. 193 of the Law of Property Act, 1925. These include all urban commons and some rural commons; to them the public have a legal right of access for exercise so that nothing should be done to detract from that right by reducing substantially the area available for public use or making them less attractive from the public open space aspect. On the smaller of these commons, although not as much frequented by the public, the same conditions as under (1) should apply. Some of the larger ones should be considered for afforestation in part, subject to the special safeguards discussed under (3).
- (3) Commons not regulated nor subject to S. 193. The essential requirement in this class of common is that they should retain their commons status to distinguish them from freehold open country where the inherent right of the owner to use the land for agricultural or forestry purposes has been recognised as over-riding any requirement of the public for access.

To secure the proper balance between such various uses in the case of commons, there is required a general survey in order to determine in any particular area whether there is sufficient access to open country to suit the nation's needs. It is clear that until these needs and those of nature conservancy have been fully surveyed and determined, the "reservoir" of common land at present protected for this purpose by established user cannot lightly be decreased. Nevertheless, subject to the safeguards which meanwhile reserve for them their special function, our commons can well serve a wide diversity of appropriate use.

The Commons Society is sympathetic to a fuller use of common land, always provided that the customary public use and the commoners' use, for the protection of which the Society was founded, is adequately provided for. The Society emphasises that the grazing rights of the commoners should be fully exercised and that this requires the whole-hearted co-operation of all concerned to foster this use in cases where it has fallen into neglect. Grazing by the commoners remains the main use most compatible with those other traditional purposes of commons preservation including the conservation of wild life, of public access and amenity.

The Society considers that there are adequate precedents to justify the belief that, as in certain of the National Forest Parks, planting and access can be made compatible. In the case of commons, however, the growing of timber crops on appropriate areas must be subject to give and take with the requirements of public access; public access and afforestation must be judged *pari-inter-pares* and access must not be merely on sufferance to such portions of the land as are not required for forestry use. Increased user by the owner of the soil or part of the common must carry with it some obligation for maintenance of the rest of the common. For example, making good the destruction of the surface by transport, avoiding severance and the spread of seedlings on the open space which is a usual accompaniment of forestry user; also providing paths for the public and open glades at appropriate viewpoints. Unless this is done one is forced into the position of determining compensation for an indeterminate body of users for an indeterminate amount of damage.

With regard to fencing, it is important to remember that no fencing for forestry purposes on any common is lawful without the consent of the Minister of Agriculture. It is considered essential, if afforestation of such areas is to be accepted, that some control should be maintained so as to satisfy the full requirements of the public for use of the common as a public open space, and of the commoners to use it as a grazing ground.

The Minister of Agriculture considers that as the law stands at present, he cannot permit the fencing of commons for such purposes as forestry unless he is satisfied that such fencing is in the interests of the commoners as well as the public using the commons, an interpretation with which the legal advisers of the Society agree. There are cases where fencing for the improvement of the commoners' pasture or for the protection or regeneration of the natural growth of a common might well be regarded as satisfying the necessary conditions of ministerial approval. But this cannot be considered as covering all cases of large commons where, after allowing for a full enjoyment of common pasturage, for the needs of townsmen as well as the local residents to have space to wander, and for the need to preserve the depleted remnants of our wild life, there are still left over substantial areas of land on which the growing of timber would be expedient in the general pattern of land user, and the Society would not oppose a reasonable amendment of the law so as to permit in such cases that parts of the common could be temporarily fenced for such purposes. The Society feels, however, that there must also be machinery for the safeguarding of such traditional functions of commons as providing for public access, amenity, and wild life preservation. Such aspects have been recognised by past legislation, which although it has not, with regard to many commons, created or imposed any public right, has at least ensured that use of the land by the owner should not conflict with these functions.

The problem remains in judging, on its merits, the proper use of each common, just as it has done in the past—to balance the traditional uses of common land

with other interests without real detriment to the former. The solution of such a problem cannot be left to the whim of the owner of the soil of the common as it is left in the case of ordinary freehold land. If the owner is to be permitted to plant on a common, he automatically excludes the public from access to the plantations, and no amendment in the law to enable him thus to exclude the public from parts of commons in connection with his afforestation activities would be tolerated by the Society, unless it provided reasonable machinery for objection and the imposition of safeguards for the interests of the commoners and the public.

APPENDIX D

Publications to which reference may be made

Eversley	...	Commons, Forests and Footpaths. (Early history of the Society.)
Hunter	...	Open spaces, Footpaths and Rights of Way.
Baker	...	Commons—their nature, function and preservation.
"	...	Commons, Village Greens and other open spaces.
Halsbury	...	Laws of England (3rd edition) Title "Commons".

APPENDIX E

List of Acts affording protection for commons

1857	...	...	Inclosure Act (S. 12).
1866, etc.	...	...	Metropolitan Commons Acts.
1876	...	...	Commons Act.
1893	...	...	Law of Commons Amendment Act.
1894	...	...	Local Government Act.
1896 and 1912	...	...	Light Railways Acts.
1899	...	...	Commons Act.
1909	...	...	Development and Road Improvement Funds Act.
1916	...	...	Defence of the Realm Act.
1919	...	...	Land Settlement Act.
"	...	...	Forestry Act.
1922	...	...	Allotments Act.
1925	...	...	Housing Act.
"	...	...	Law of Property Act (Ss. 193 and 194).
1944	...	...	Town and Country Planning Act.
1945	Requisitioned Land and War Works Act.
1946	Acquisition of Land (Authorisation Procedure) Act.
"	New Towns Act.

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Examination of Witnesses

LIEUT.-COLONEL E. N. BUXTON, M.C., MR. J. B. HENDERSON, O.B.E., MR. HUMPHREY BAKER, O.B.E., M.A., and MR. W. H. WILLIAMS, M.A., LL.B., on behalf of the Commons, Open Spaces and Footpaths Preservation Society,

Called and Examined

379. *Chairman:* We are extremely grateful for the very full and valuable memorandum which the Society has given us. I ought perhaps to say, for the benefit of other members of the Commission who have not yet seen it, that we have had presented to us by the

Society in addition a list of the commons which have been requisitioned, giving the acreage taken and the total acreage of each common, and also an index of subjects in the memorandum of evidence which we can circulate to members of the Commission.

Perhaps I should say, Colonel Buxton, that what I myself have done is to formulate some questions on practically every one of the paragraphs of your memorandum, mostly on the basis of the evidence which we have received from other bodies. I thought it would be convenient for you to know what is being said, sometimes in support of what the Commons Society wishes to put up, and sometimes against. I hope you will not think I am becoming an advocate for the other side: I am merely putting the points to you so that you can deal with them.

What I suggest is that we take, first of all, my first four general questions at the beginning, and then questions on each of the paragraphs. There will, of course, be supplementary questions arising out of my questions, either by me or by the other members of the Commission, and other members of the Commission may also have questions on particular paragraphs. If you yourself would like to elaborate any of the paragraphs the Commission will be extremely glad if you will do so.—*Lieut.-Colonel Buxton*: If we may follow that sequence as we go through the memorandum that, I think, would be the best. A particular point may be answered in my answer to a question or it may be that in subsequent paragraphs we have made an observation which I can comment on. I will try to make it logical. There was one small preliminary thing I would like to say because it will save repeating, about the *de facto* use of commons on which we so much rely.

The *de facto* use of commons is not a legal matter; it has a technical effect rather than a subtlety of law, we feel. It is true in the past the *de facto* public enjoyment of commons has depended on a complex, antiquated custom of law, but all clarification of that access as a right has been built up on the use of commons. The public feels the importance of contact with wild country to the health and the morale of the nation, and you cannot expect it to forego the necessary safeguards however illogical they may appear. Compared to the law's original purpose, without adequate safeguards under new legislation which recognised public access as one of the principal uses to which better management of commons should be

applied, there is at present no alternative legislation by which such safeguards could be adequately secured. All open space legislation has been framed, so to speak, within the framework of the access to commons. There is no legal access to many commons, but the *de facto* access is a very precious thing to consider when changing the law.

380. I think that really raises my first question. The reference to Section 193 of the Law of Property Act, 1925, in the preliminary definition in your memorandum is not very clear. May we take it that the Society is concerned only with those commons which are either by law or by usage open to public access, that is, what we sometimes call in the discussions we have had with previous witnesses 'amenity' commons? It is not concerned with lammas lands and other commons used exclusively for cultivation and grazing?—The Society is concerned with all commons and all common rights. From the access point of view, broadly speaking, where commoners' cattle can go the public can go, so we are interested in lammas land although we know its different use and treatment.

381. By your reference to Section 193 you merely mean to refer to those commons in which there is a legal right of access?—No, definitely not.—*Mr. Williams*: I think I might just say we have cleared this matter up with the Secretary to the Commission, who has told us of the definition to which the Commission is working. I can say our memorandum does apply to that definition.

382. You use the same definition as we do?—Yes.

383. Then the second question can be got out of the way very quickly. Though the Society includes towns and village greens within the definition, as we do, it makes no recommendations on the subject. May we take it that in the Society's view the law is satisfactory?—*Lieut.-Colonel Buxton*: We do include them. The law is more satisfactory than is the state of some village greens. It is a fact that you very often cannot find an owner. The greens need protection against being turned into an urban use, like a car park or a public lavatory. It is indeed a matter of degree. Where there is no owner there should be some provision for the parish

council taking over. I do not know if Mr. Baker has anything to add.—*Mr. Baker*: If course, in the technical legal sense, a village green is an open space over which there is a customary right of recreation for the local inhabitants. It is like public ground where there is for instance an annual cricket match or something of that sort. That is in the strict legal sense a village green. From our point of view the present term 'village green' also includes what we would normally call a village green whether there are any actual customary rights of recreation over it or not—the little open space—part of the amenity of the village. We would feel, on the whole, that the parish council are the right people to manage these small open spaces, and we have helped parish councils to acquire them or assume control in a great many cases, but the difficulty is constantly arising that these little bits of land have become no man's land. Nobody can find out to whom they belong, and the parish council cannot take effective action till they can get the land vested in them.

My own feeling is it would be very desirable if we could have some legal provision that, in cases where the owner of a village green cannot be ascertained after due enquiry, advertisement and so forth, there should be some provision for automatically vesting the ground in the parish council, who would then have powers of managing it under Section 8 of the Local Government Act of 1894 and in most cases would do so. That Section gives the parish council powers of an urban authority over any open space under their control.—*Mr. Williams*: I wonder if I might add one word on the legal position. Under Section 12 of the Inclosure Act, 1857, and Section 29 of the Commons Act, 1876, it is an offence to inclose part of a village green or interfere with its use as such, but the Sections may not be made use of where the boundaries of the green are not certain. It would be helpful if boundaries were made certain.

384. *Mr. Arnold-Baker*: I think I am not wrong in saying one of the problems in connection with village greens is to discover who has what rights in which piece of land. Would it be your point of view that a simplification of the law on that point with relation to village greens and other small bits of land scat-

tered about the village would materially improve the chances of this difficulty being modified?—*Lieut.-Colonel Buxton*: I think we feel it should follow the procedure for commons. It wants a public enquiry, and there should be specific responsibility for every village green, after ascertaining, by a notice and so on, that nobody else has a claim to rights.—*Mr. Baker*: Normally speaking there is the customary right of doing a specific thing annually—a definite local custom. But it is possible, and it is the case in some instances, that the village green is part of the manorial commons in the parish. In that case, common rights would have to be ascertained. I think those are really the only legal rights you have to take care of. People do all sorts of things on a village green, like keeping poultry. They think—'This is our village green, we can do what we like on it'. Very often it is the commission of a nuisance, making a mess of the whole thing; it is left to the parish council to tidy it up.

385. *Chairman*: Are there any village greens on which the rights of common are still exercised?—*Lieut.-Colonel Buxton*: I know of many where they drift off, as it were, to the common outside. The commoners virtually have the use of the village greens. The village greens are part of the manor and certainly the commoners have rights over them and use their rights for cattle and so on. That is why I said it was a matter of degree, and should be dealt with obviously in a more simplified manner than the big agricultural common.

386. *Professor Stamp*: In its long experience the Society must have had many individual cases brought before it. Does the Society keep a permanent record in such a way that it can be consulted with regard to these individual cases?—I think we have as good records as many people. Our records were not destroyed in the war, but they were subject to wartime disturbance. We pride ourselves on them but they sometimes take a little finding. They are a profitable source. We try to keep a record of every common case we have had anything to do with and they date right back, but we are a small society with a small staff and I am sometimes disappointed when chasing something.—*Mr. Williams*: I think we can say we have them all, but not listed as village

green cases. We can get them from the general indices and files, but it would take a little research to produce them. They are named, but if the question was what cases are of village greens, it would mean separating them out.

387. *Mrs. Paton*: Would you say you have a record of most village greens?
—*Lieut.-Colonel Buxton*: No, only the ones where there has been trouble.

388. *Chairman*: May we go on to my third question? I am here stating a principle which has been put to us rather forcibly by several witnesses. Does the Society agree that the principle to be applied is that of making the best possible use of common land in the public interest, even if in a particular case it involves closing the common to public access? In other words, it is not the Society's case that all common land must remain open to the public, but only that attention must be paid to the persistent and indeed growing need for open spaces, which in many parts of the country the commons so largely meet?
—Generally speaking we hold it a wrong policy to use the common for a purpose inconsistent with public access. We hope the Royal Commission will concentrate on the better use of commons as such before considering easier means of inclosure. There is nothing absolute. We have consented sometimes to some inclosure in the past. That is our attitude.

389. There has been a good deal of land requisitioned during the war, cultivated for the purpose of food production, and apparently successfully. Because of the modern techniques which can be applied, do you think those commons should still remain open to the public even when there is such a great demand for food production?—May I refer to those twenty thousand acres of requisitioned common which, I think, were a very real cause for establishing this Royal Commission? They were taken over without protest from anybody in wartime, with the usual promise that naturally they would be restored after the war. A great deal of capital was put into them and we, as a Society, have done our very best to stir up commoners and see that, when handed back, the land did not deteriorate. Heavy agriculture on a great deal of that land was only justified because of wartime. There was an

enquiry in all those cases, and in fact three thousand acres of common land were retained. We raised no objection to that because a full enquiry was made in each case. We naturally took far more interest in the land which could be turned back to grazing, and which we hoped would get a proper study. I think our evidence and the whole object of this Commission, is that the present law does need some amendment to get those commoners interested who were best able to use the land. There are a few cases where cultivation is still very successful, which are still held in requisition. There are places where it is difficult to hand back and requisition still stands, and we have not discouraged that in the hope year by year for a Royal Commission which would solve the problem and get the law altered. It has seemed most suitable to continue temporary requisition for those particular problems we have to deal with for the time being until a better solution is found by this Royal Commission.

390. *Professor Stamp*: May I ask for an explanation of two points on that? I presume that the Society is therefore against the maintenance of arable cultivation, which is in fact a change of use from your point of view?—Yes, where it could be avoided by a satisfactory return to other conditions.

391. You said just now you envisaged a return of the land as grazing.—That is the best use because it combines with use by the general public. It needs many forms of encouragement, about which we have given some evidence. We do not feel that the land should become permanently inclosed ploughed land.

392. That, if I may interrupt, was the second point, namely, permanently inclosed land. Now in handing back land to commoners to be maintained as good grazing, do you envisage it being enclosed by fences?—We do not object to fences as such. Fences are one of the means by which it is practical to provide for both interests. We shall have several questions on fences later, Mr. Chairman.

393. *Chairman*: Yes, but we might as well clear up now this distinction between enclosure with an 'e' and inclosure with an 'i'.—*Lieut.-Colonel Buxton*: I am afraid, Sir, I would not guarantee it has not been used both ways in our paper. I am afraid many of the people with whom we deal do not spell.

394. There is, in fact, a distinction, is there not between a legal inclosure with an 'i', in which case members of the public will probably be excluded from the use of the land altogether, and just putting fences round land, commonly called enclosure with an 'e', which would not necessarily exclude members of the public?—We accept that, Sir.—*Mr. Williams*: I think that if in paragraphs 2 and 27 of our memorandum 'e' in 'enclosure' was changed to 'i' that would make us straight.

395. I have changed it in my own copy. There is a further question arising. We are receiving evidence of the need for afforestation, in some cases in relation to farming, which presumably would mean keeping the public out at least for many years.—*Lieut.-Colonel Buxton*: We do not feel that, generally speaking, intensive cultivation of trees is a good use of commons. On the other hand we think it a great pity that the ordinary lord of the manor can gain his timber but cannot replace it, through the temporary enclosure of areas consistent with the public use. Secondly, tree planting ought to be consistent with the commoners' agricultural use. It should be recognised if possible as a genuine use, practicable and reasonable, but we suggest it should come under a scheme. Once the land is fenced off under a scheme it would very much correspond with any small scale operation, protection of the cattle and so on, which we all think are quite safe provided they have been put in under a scheme. I think the essential difference is rather like the difference with open land. We very much appreciate the National Forest Park which enables the public to go up through rather a narrow entry, although they very often have free access to open land at the top. That is an addition to the right to wander similar to that provided by open land. We think, as regards common land, it is important to reserve the land as common, in spite of tree planting, and when it comes to a final opinion about it, we think excessive numbers of trees, that is to say, solid planting of a common, is a matter that wants full enquiry. It is proper that there should be a reasonable amount of shelter belts and medium planting, which provides good timber. All such lesser degree planting would come well within schemes, provided it did not interfere

unreasonably with other things. We consider we need the same safeguards as provided by the present law with full enquiry.

396. I take it the interests of the Society and the problem of access would vary very much with individual commons; that it is almost impossible to generalise?—It is impossible to generalise, but commons are only four per cent. of the area of England and Wales. They are a necessity to the highly populated civilisation in which we live, and are at present the only open spaces safely guaranteed under modern conditions. We believe that the area is not a considerable amount, and that it needs in every case careful consideration as to whether commons are needed for access, wherever they are in England, because of the enormous increase of transport able to get there and because of the difficulty that, in planning for open spaces, the matter is not only a local one; it is a matter affecting people from afar.

397. There may be commons where access by road is so difficult that they are very rarely used by members of the public, except possibly local villagers. I am thinking of places in East Anglia, where the road system is sometimes not very good.—Those are the directions in which many who want to get away to the wilds, as many great men have done before, tend to go. We must consider them in the future.

398. *Mr. Floyd*: Might I ask whether in some cases, even without going to distant parts, a wooded common might be of as much an amenity as an open cleared common? Would you prefer to see the whole of Epping Forest and Burnham Beeches cleared of trees?—In those two, tree planting must always take a place. The preservation of trees comes into consideration. There are a great many commons which are automatically going down to woodland, and it is a pity the woodland cannot be adequately managed. Within a scheme we believe that can be very well done.—*Mr. Baker*: There is one point I would like to add in regard to commons not accessible by road. There are rambles to be thought of. Their object is to get away from the roads. The movement is continually increasing. I think we have to remember them when thinking of rather inaccessible commons.—*Mr.*

Henderson: Can I add one point about the value of inaccessible parts? Representing a pedestrian organisation concerned with the use of land for walking, I very much value them. We do prize these parts which are inaccessible and wild.

399. *Sir George Pepler:* Might I ask if the conservators of Epping have the right to replant and do they actually replant?—*Lieut.-Colonel Buxton:* They replant very little because they are very fortunate with natural regeneration. I think the Corporation of London may be giving evidence later.

400. *Mr. Floyd:* Generally speaking to establish a new forest you would have to fence it in in series, not all at once. When woodlands are cut down there is usually a public outcry. Would you agree with me in some cases once the forest is established it might have even greater amenity value than merely one more bit of open land, and at the same time be producing something for the country?—We feel it is a matter of degree on which enquiry should be made; but generally speaking those who live shut up in towns go—if I may take Epping Forest as an example—for the little clearings in the forest. All we ask really is so far as possible, since we must have places to grow trees, we should not enclose commons, when there is so much freehold land and waste freehold land to plant, and that where there is planting—or where there should be planting—of a common, due regard is paid to access and the importance of these big open spaces for common grazing.

401. *Professor Stamp:* Could I follow up one point on this question of the inaccessible commons? Many that I have in mind in more distant parts of the country are not in use at all by rambles or by anyone else for the simple reason that, being neglected, they are virtually marshes and are always so wet. Being undrained land they are useless for the purpose of commons. What would be the policy of your Society?—Subject to paragraph 8 of our memorandum, where we stress the importance of wild life and so on, we believe that good grazing and good agricultural use is the proper way to treat a common and does much improve its value for access. There is no reason,

because the common is drained and improved, why you should take away public access, in our opinion.

402. Could I deduce from that, Colonel Buxton, that your Society would agree that all commons require some degree of management?—Absolutely. We have laid it down in our memorandum. We think that should be the first object, that every common has management, but we also lay down that first cases should come first. Whatever you do with commons there must be investigation. We feel very strongly that the whole thing would get bogged down if you said, 'We must have a survey of all commons before we can do anything.' We believe if there is a purpose underneath each enquiry into management, there will be far more ready co-operation in disclosing rights and in not treating the thing as so much red tape. But it must be generally first cases first. We have said in our evidence if in the long run there is not a local demand for co-operative work by starting a scheme, the Minister should take the initiative and no common land in this country should be left without a scheme of management. Even for wild life it is necessary to manage in this artificial age. It wants responsible people with local knowledge in control.

403. *Chairman:* May we take my fourth question? Since the Society began its work, a great deal has been done to provide open spaces through the local government system and otherwise. To what extent has this diminished the need to 'freeze' the commons on the basis of an extended interpretation of 'benefit of the neighbourhood'?—Perhaps I might repeat what I have said. We think very little. The provision of open spaces has generally been left secondary to other considerations, notably in the National Parks Act, where there is preservation of scenery but not great consideration of open spaces. All surveys and consideration of further needs under present law are based on the *de facto* access to commons. It is not only so in legal drafting but in practice—in such things as access agreements and so on. There has been very little legislation which we can possibly say has altered the position as to the need for commons for access.

404. *Professor Stamp:* Following up that point, what about the attitude

of the Forestry Commission? I think you said earlier that, subject to suitable safeguards, it is the policy of the Forestry Commission to open for public access as National Forest Parks vast areas of land which were not previously available to public access?—I am afraid I would not agree they were not available. They mostly were available for public access in the past. May I repeat the point that, although it is an addition, it is an addition of narrow ways up to the open land at the top. It has some value in another way for people can see what forestry has done. I know my Society would wish to say nothing against National Forest Parks, but they do not replace the particular need of the human race to get out in the wilderness which is provided by open country.

405. *Chairman*: May we come to your memorandum itself? If you would like to raise points on the paragraphs apart from those I raise, please do so. The only question I have on paragraph 1 is this: may we take this paragraph to mean that the Society favours, not only a considerable amendment of the law, but also of its consolidation when it has been so amended?—Broadly speaking, yes. I wonder if we might turn to paragraph 44? It is our final paragraph. Of course, we qualify that recommendation by the final words, 'with fresh provisions to implement the Society's suggestions as to schemes'. Quite clearly, we cannot wash out all local Acts. Consolidation is a very difficult business. It takes Royal Commissions and a lot of trouble in Parliament to achieve it. We want consolidation, but it must be in a form where these local Acts, which are satisfactory for a given purpose, are not wiped out. We believe consolidation under these conditions is absolutely practicable, but we wanted to call attention to the fact that in consolidation something in the nature of our schemes is necessary to bridge the gap.

406. It would be consolidation of the general law, would it not?—Yes, because different provisions under different Acts are very confusing.

407. Paragraph 3—Would the Society agree that the 'heavy demands' are due to the increasing population, which makes it necessary to put every part of the land to the best possible use, and that the 'conflicting demands' are really due not merely to conflicting interests but also to different views of the public

interest?—Our point in that paragraph was that all the problems about commons are similar and that the arguments each way are very much the same now as then. They are certainly due to conflicting public opinion. Some stress pounds, shillings and pence; some health, morale and convenience. Those are conflicting views, but they are conflicting interests which we believe with good management can be combined and reconciled.

408. The point I was getting at is the public perhaps has an interest in the proper use of the land. It is not a conflict between public and private interests.—I would agree entirely, Sir. Where we use the word 'public' I think we largely mean 'such public as have access'. As a Society we believe that that is as important a use of land as we can get.

409. There is one sentence, or phrase which may have led to that, 'the growth of towns and more intensive farming methods'.—We are not quarrelling with that. We are simply saying that, as farming itself becomes industrialised and there is the inevitable uprooting of all things that are natural, there becomes all the more need for the human population to keep in touch with the more open and wild country. I am afraid as I read that myself afterwards I thought people might think we were quarrelling with more intensive farming methods. I am afraid it does rather give that impression.

410. *Professor Stamp*: You have emphasised once or twice now, the particular attraction, shall I say, of wild country. Is the point of view of the Society that the open character of commons which is not a natural feature but is a result of past use, is what attracts the public rather than, let us say, a common like Ashstead Woods, forested with oaks, with glades for picnicing, or the New Forest? I am wondering whether it is not inconsistent with what the public would like, that the emphasis should be essentially on wild and open land.—I think the emphasis must be as I have put it. That is what this Society was founded to preserve. As you get nearer towns naturally the common must be less natural. I think you will be hearing the Nature Conservancy, and they will also no doubt say there is nothing natural in our scenery. I admit that man is perhaps the most severe pest. I do think broadly speaking the word 'natural' need not be too scientifically

defined. At the other end of the scale I think people very often forget that in our artificial surroundings the farming of nature is a far more modern and difficult practice for man than are crops which he has been used to for years. Probably the more correct term is 'less artificial'.

411. I am wondering whether with a change in the public point of view, it is not perhaps conceivable that we shall get back to the point of view of old William Cobbett, who described Hindhead, I think, as the most God-forsaken spot that God ever made. This was the prevalent point of view of common land not so very long ago.—If I may say so, Sir, there was a vast amount of desolate land in those days so that they felt very proud of having conquered by human effort a certain amount. Now there is very much less, and I think the demand for it is as great as ever. Of course, people like going about in trees and woods. I dislike harking back to Epping Forest, because I hope you will hear separate evidence on that, but there a few people thoroughly enjoy going through the woodlands. Mostly though they prefer the open spaces, even the roundabouts, in the forest to going into a fine beechwood, but that is a matter of degree.

412. *Mr. Floyd:* May I ask one last point about the question of trees and open spaces? It has been said when you plant a wood or cut one down you do not either create or destroy beauty but you destroy people's personal associations. That is to say, taking the area of the Quantocks, it is customary now to regard it as an open space. If, however, you plant it with a forest, that will be changing people's personal associations and, therefore, people will object. Imagine next that the Quantocks have been covered by a beautiful forest. Cut it down and you will again be accused of desecrating the country because you will once again destroy those personal associations which people have. May I turn now to the forêt de Soignes, which you may know, outside Brussels? That beech forest is regarded by the people of Brussels as their most precious possession. It is full of people all the time. Small areas are fenced if necessary. I do feel therefore when we talk about this question of open space versus trees we have got to recognise it

is not really beauty which is either created or destroyed necessarily, it is people's personal associations to which they have been accustomed. Think, for example, of part of the Sussex Downs, when the Goodwood beeches were cut down: and think, on the other hand, of a piece of open downland and of what would happen if you tried to plant it. I feel that public opinion is slowly changing, but what we really dislike is having something to which we are accustomed taken away and replaced by something else.—Of course, that is a matter of degree, but undoubtedly the Forestry Commission must be sympathised with in their efforts over the last 40 years. Instead of Brussels, may I mention Fontainebleau? When I was a boy I went over to Fontainebleau and it was perfectly bideously managed, being entirely timber growth. There was a revolution in French forestry before there was one in German or English and a much more natural system was adopted. I think the public which does not favour trees as cubic feet of timber but loves them as trees, would ask for Fontainebleau as it is now developed rather than as it was being developed when I was a boy. I think that is the difference.—*Mr. Baker:* I think, if I might interject, it is the rigid commercial afforestation which one dislikes so much. The New Forest I know fairly well. There are a great many rigid plantations. One feels when getting about the Forest one wants to get through the enclosure to get to the open Forest beyond. I do not necessarily mean the bare heath; the old natural woods like Marks Ash and others are supremely beautiful; but it is the uniform afforestation that really has very little amenity value on the whole. That is my own personal feeling about the New Forest.

413. The Forestry Commission by and large have to afforest bare land. Because of the pest of rabbits that means fencing and planting, and young trees are more economically planted in straight lines, but if we are able to do away with rabbits wire netting will be unnecessary and natural regeneration rather than planting might become the normal practice of the Forestry Commission as against artificial replanting. Further, once the wood is established, it can be regenerated in future on a more regular system. I do think the first forty years have not given quite a fair picture of

what forestry in this country will look like when running on normal rotation. If to start with you take for example a thousand acres of woodland in the middle of Wales and cut trees in rotation you will get results which are more normal than starting with land as bare as a table.—*Lieut.-Colonel Buxton*: We accept that. It is merely that in the planting of commons we should wish their status to be preserved.—*Mr. Henderson*: Can I just say I think a nice balance in this matter is what we would wish? If you walk through miles of thickly wooded country, get to the edge of it and see wide vistas, that is something you can never forget. I think emphasis has been a little too much on agriculture and afforestation. I hope we shall not be deemed in any way as against tree planting, but I think it is important the balance should be a nice one, and the open vista is a very important aspect of our countryside.

414. *Chairman*: All this does not require that land should remain a common. In other words, there is no reason for maintaining a commoner's rights as such if it is more convenient to get rid of them. All you want is access and amenity?—*Lieut.-Colonel Buxton*: I do not think we could accept that. We see no reason why you should abolish the safeguards and everything else connected with a common merely because you want to plant trees, when you can have a scheme for tree planting and still maintain common status, which is a much simpler way for securing access and so on. We would not readily give up the common rights of pasturage, where they could be improved if they are properly looked after, merely for tree planting. We cannot accept that the best way is to enclose and then give access.

415. I thought all this evidence you were giving laid emphasis upon the need of access to the land for the large population of the town. If you can get that access by some other means and also make better use of the land for other purposes, is not the Society just as well satisfied?—Not so well satisfied.

416. *Mr. Arnold-Baker*: If you preserve the common rights, would it be your attitude that there would then be people locally who had a vested interest in keeping the common open?—

Broadly over the big hill commons common rights are used. May I put it this way: we do not want their balance upset by an intrusion of woodlands between the farms and the top of the hill.

417. I used the words 'vested interest' in the best sense.—We know there is a vested interest, and it is an interest which as a Commons Society we must bear in mind—the form of agriculture, etc. Hill farming is very dependent on the common. We must keep that in our thoughts on what is the best thing to do with a common. Of course, if rights are not going to be used, are not needed and are not economic in spite of efforts to make them so, we would have to consider an alternative use and we should probably be satisfied with public access combined with an enclosed use, but we should prefer 'enclosed' use, with an 'e' to 'inclosed' with an 'i'.

418. *Professor Stamp*: What would be the attitude of your Society when there is a definite conflict between the commoners who wish to pasture their animals on a common, both cattle and sheep, and the interests of public access? I do not think I need labour that, but there can be conflict. It is very well known in granting public access you not only allow the public, but their animals, particularly their dogs, and it seems to me it is inconsistent in many cases to maintain commoners' rights of pasturage and grant public right of access. What is the view of the Society?—The proper answer is, it is inconsistent to allow public access with dogs not under proper control. We are bound to say that in our history we have leaned towards public access, but with due fairness to the other interests, whether the lord of the manor or commoners.

419. If you do not extinguish public rights do you not allow the public with their dogs to go on the common and have you not to worry about the consequences? Are you going to stick up for public or commoners first?—We should stick up, I think, for the public first on this very delicate question, but I should still believe that in securing public access we should encourage the public to keep dogs under proper control. By that I do not mean dogs on a lead, any more than humans on a lead. Dogs' access should be under proper control as

should public access also. Whether commoners or not you have to protect the surrounding farms and wild life.

(The proceedings were adjourned for a short time.)

420. *Chairman*: I have no questions on paragraph 4. I do not know whether anybody else has, or whether you would like to say anything?—*Lieut.-Colonel Buxton*: Only that I think perhaps it has been brought out already that grazing and public enjoyment are not just complementary in legal effect but in practical effect also; the grazing interest enhances the public enjoyment.

421. On paragraph 6, my question is—if may we put the paragraph in this way—if the public has enjoyed access to the common then unless it is decided that in the national interest some other use of the common would be more appropriate, the public ought to have access to the common as of right with proper safeguards for private rights and the rights of other members of the public?—You use the word 'if'—'if the public has enjoyed access'—which makes it a little difficult for us. But apart from that we would say that if the common is to be used for a primary productive use, temporary and partial exclusion of the public would be reasonable, but if the common is to be inclosed consideration of all loss of access must be given due weight and the opportunity of objection afforded. That would be our answer.

422. *Sir George Pepler*: I noted the sentence which says:—

'It has been acquiesced in for over a century by those having legal rights over commons.'

Does that apply to all commons? Is that a completely general statement?—Yes, I think so, but it has also been accepted in the drafting of new laws. Each new law has assumed that where it is so and where in 1876 law-makers were only thinking of people living just outside the towns, each successive law has gone a bit further and finally, in 1925—with Sections 193 and 194—the Law of Property Act supposes that the public would be using commons far distant. There has never been any difficulty in those sorts of clauses getting into the law. The two Sections in the 1925 Act provided, in return for access being legalised on some commons, the ability for the lord of the manor to have safeguards for the public's

proper conduct. It is in that sort of way that we say it has been acquiesced in.

423. *Mr. Arnold-Baker*: If you were to create a right of the public to have access that would almost automatically prevent certain uses of the land, would it not? The sort of examples that spring to my mind, of course, are softwood forestry and ploughing. How are you going to reconcile that type of use with a right of the public to have access to the land?—Under a scheme there would be the right reasonably to exclude the public from those areas where they would be harming the general interest of the common. It would be done under a scheme but we would say done reasonably.—*Mr. Baker*: It would be all part of a general re-casting of the law.—*Mr. Williams*: I think it is actually dealt with in paragraph 26 of the memorandum, which talks about temporary suspension of those rights on those parts of the common used for special purposes.

424. *Chairman*: Do you mean you wish for a general extension of Section 193 to apply to rural commons as well as urban commons?—*Mr. Baker*: Yes.

425. Section 193 now applies to all urban commons, does it not, and only such rural areas where you have a deed signed by the owner of the land? You do not want an extension of that to apply to all rural commons automatically?—*Mr. Williams*: Yes, I think we do.—*Lieut.-Colonel Buxton*: Yes, to the extent that it would be better if it applied to all commons. Of course, there would also be a number of provisions for bye-laws and protection, and so on. The two sides would have to be provided for.

426. But your scheme does assume that from time to time the public may be excluded?—Yes. We have used the word 'temporary' because we feel for many purposes it would be a shifting use, such as fencing in for ley farming. The great thing is that when it is no longer required for that purpose it reverts to public use.—*Mr. Baker*: I think we have found that Section 193 has worked very well where it has been applied. Where deeds have been revocable none I think has ever been revoked. It seems satisfactory and we have for a long time thought it could be automatically applied to rural as well as to urban commons. That is where we start from and, of course, it could be combined with modi-

fications under the proposed schemes. Section 193 itself provides for a quite elastic range of conditions to be made by the Minister in applying it.

427. Do you know what sort of owners have used Section 193? Are they just a miscellaneous collection or is there some particular group, for example, the Crown Lands Commissioners?—*Mr. Williams*: The Commissioners applied it to a large number of Welsh commons. I think that is the only part of the world where the Crown applied it. In other parts it was simply individual lords of the manor.

428. Who did so in order to obtain power of regulation over the common?—*Lieut.-Colonel Buxton*: And in the public interest too, I think. The rather famous Allendale case was one of the first that came up years ago. It was gone into but was felt unnecessary at that stage because there was no difficulty in the position.

429. I think my question on paragraph 7 you answered just now. The phrase 'benefit of the neighbourhood' is now quite misleading?—We would only point out that it is equally precious to the village as well as to the bigger, wider neighbourhood, now that there is such intensity of farming. The ordinary villager needs his local common too. We mean that paragraph to apply to both local and wider needs.

430. Then on paragraph 8 there are several questions. Are rights of estovers and turbary now of importance?—Not generally but quite important in some places. The estover of bracken is used I believe in quite a lot of places—Ashdown and Cumberland. Part of it was of value in the New Forest and the Forestry Commission arranged for it—they cut the stuff. I do not know if that does still go on but it did earlier. Generally, I think the answer on turbary and estovers is that it rather depends on the cost of fuel and straw, and so on. Turbary is used very much for fuel. In the hill country it means turf and peats, which may be very valuable. The rights are by no means disappearing and are of importance but they are not widespread—I think that would be the answer.

431. Do not rights of turbary, and also the right to take stone and gravel, result in a rapid deterioration of the land, not only from the point of view of grazing

and cultivation, but also from the point of view of public amenity?—I think one would say that of late years the damage has been insignificant. They are both bound up to a certain extent—I should not perhaps say always—with the need not to interfere with the other uses if there is grazing. The taking of gravel and stone has been abused in the past—in places the local authority has the right to take stone and gravel for roads—but we could not say that it has been a serious menace of late, and where it is done gradually it does not always disfigure the place seriously. We do not consider it a serious threat.

432. We have seen evidence that there were cases where the land was now completely derelict where these rights had been exercised in the past, particularly in marshy ground where the right of turbary had been exercised.—I expect it depends on what is considered to be derelict. It may be difficult to plough or cultivate, or to improve the grazing. Some lands get very pitted, and so on, but from a natural point of view they get clothed over in most cases.—*Mr. Baker*: Of course, from the point of view of the use of the land, a peat bog is not very much use before the peat is dug, and even when you take the peat it is no more or less useful than before.

433. But under the arrangements of your schemes the solution to the problem might be to drain the land?—*Lieut.-Colonel Buxton*: It might, but equally there may be a very definite interest to the scientist in the vegetation between the top of the peat cutting and the bottom.

434. I come now to a question which is designed to provoke you. The best way to preserve wild life is to keep out both the public and the commoners and to let the land revert to jungle. Can we any longer afford this 'sentimentalism', except in specifically allocated nature reserves?—Of course, we could not admit that jungle is good for wild life. A vast amount of wild life is dependent on the particularly graduated conditions of the common. Equally, we think it is impossible to keep people away from wild life. I think the question would be best answered in our last sentence in paragraph 8, where we say: 'They serve also to preserve the rarer forms of wild life which cannot flourish in the hedgeless and highly cultivated areas of modern agricultural land.' I think we

ought to add the words 'nor can humans'. Wild life cannot survive unless people learn to appreciate it and vice versa.

435. *Professor Stamp*: It does seem to me there are two very important principles which are raised in this question. I am interested to find the introduction of the word 'jungle'—that is an interesting conception—but the first point is where you say 'Whether or not any common is fully grazed it generally has trees . . . ' and so on. You would agree, would you, Colonel Buxton, that the present status of the vegetation of any common is due to the existing balance between use and the serial development of the vegetation?—Yes.

436. If you take away the grazing animals it will change, if you increase the number of animals or use it in another way again it will change, and it is only maintained as the type of common which we may happen to like because of that balance of use?—That is true. That is why we feel a balanced use is part of not only the charm but the significance of commons. Far be it from us to think that doing away with grazing is a good thing even for the wild life.

437. So that whatever is done it is essential to secure a form of use by grazing in order to maintain a common as we know it?—Very necessary, but I think the Chairman said, 'Can we any longer afford to allow land to go wild except for nature reserves? ; the problem is how to preserve all sorts of bits and pieces of country in a balanced gradation of nature. We consider that grazing the common is ideal for access by ordinary folk as opposed to scientific experiment. Of course, the Nature Conservancy will convince you I hope that it is not sentimentalism we are dealing with but that for the nation preservation of wild life is an important biological fact.

438. *Chairman*: I was thinking in terms of some evidence which was given to us about Maidenhead Thicket which is now a wilderness and unusable by anybody—I have never been there.—It is a National Trust property and it is inordinately covered with thicket. I must be careful not to give National Trust evidence, but I think you will find the National Trust have a little more power for fencing the common, and that it is being controlled in that way to the satisfaction of the Minister. That is a case

of an inordinate amount of thicket resulting from lack of grazing having to be dealt with by a much more extravagant way of cutting and keeping it down and by the substitution of other forms of agriculture. We appreciate there is too much thicket.

439. You would not regard that thicket as the most admirable thing from the point of view of wild life?—Certainly not. Wild life hates a universal blanket of one kind, whether conifers or bushes; they do not like one continuous thicket.

440. *Professor Stamp*: I was wondering if instead of adding those two words as suggested to the last sentence you would not on reflection prefer to cut out the whole of that sentence? I would like to suggest 'not necessarily preserving the rarer forms of wild life'. There are certain fauna and flora which are associated with each stage of a common. You may have rarer forms of wild life which must have well-laid hedges such as are found on cultivated land, whereas other types of wild life prefer the thicket. Each type has its own associated fauna and flora. Would you agree that is the case?—I certainly think we should scratch out the word 'rarer', although I gather certain rarer animals have survived only on commons.

441. Would you make it 'characteristic forms of wild life'?—We should be happy to transform it into 'characteristic forms of wild life'.

442. *Chairman*: There is one other question on this paragraph. The Society is not concerned to maintain shooting rights?—We are not concerned to do so but neither are we concerned with extinguishing them. On a common a *modus vivendi* is usually practicable. There is a famous one—Ikley Moor—which is always being quoted as a common where shooting is excellent and the common is all right. I do not think you want to hear any more about the old troubles on the grouse moors in the Peak District, which we hope are a thing of the past. We cannot claim to maintain shooting rights, but we must not be considered to wish to extinguish them.—*Mr. Baker*: I take it that the shooting rights referred to are those of the owner of the common and not other people who try to shoot on the common.—*Lieut.-Colonel Buxton*: Not poaching! But I am afraid the ownership involves letting. I have heard it said that the tenant is to blame when he is the owner of the shoot,

whereas I am afraid we think it is not the shooting tenant but the landlord who has given trouble over access in the past.

443. Paragraph 9 is really complementary to the other paragraph, is it not? Could not these objectives be attained within the framework of town and country planning?—Not as far as the law stands at present.

444. No. I am assuming a new system of law. Is this not really part of town and country planning in a wider sense?—We feel that the big element of agriculture should predominate in it, that the Minister of Agriculture always has looked after it, and is the appropriate body, and that it does need special treatment because it wants special management. My Society and I hardly think the ordinary conditions of planning by themselves are suitable enough.

445. The problem of access to land is, in fact, being dealt with by the Ministry of Housing and Local Government, is it not?—Only on the less satisfactory 'open country' basis. We do not feel with commons that the question is purely one of access—it is not access alone that needs looking after. The Ministry of Agriculture has been accustomed to looking after commons with their many difficulties under the law.

446. *Sir George Pepler*: I thought I saw it raised in another paragraph that the Minister of Housing and Local Government is responsible for the proper use of land. He has direct responsibility, has he not, under the Minister of Town and Country Planning Act, 1943?—Yes, but at the same time, about the same date, there was evolved the principle of consultation between Ministers which I think works very well.

447. *Chairman*: The Minister is responsible for 'co-ordinating' the use of land—if I may use that blessed word 'co-ordination'. Is he actually responsible for policy?—It was not so at the time, of course. There were grave doubts as to which Minister would win that responsibility, but we rely on co-ordination.

448. Would paragraph 10 apply to commons under the control of parish councils and other local authorities?—Broadly speaking, yes. Because of the special agricultural needs we think they should come under the same arrangement. There are some local authorities,

Surrey, for instance, who already own commons and I think subscribe to the upkeep of others, very satisfactorily. Parish councils are often financially weak and in the Peak District the local authorities are often too interested in matters like rentals to be interested in the common use, therefore, we feel that there is no reason to leave them out of the general system of schemes. Of course, if existing schemes are working well the Minister would not upset them, but we feel the commons ought to come in as an agricultural matter.

449. *Professor Stamp*: I wonder whether the Society really does mean all it has put into this paragraph 10—'In the Society's view, these purposes would best be secured by a definite and positive management scheme for each particular common'? How many particular commons are there in the country as a whole which would be subject to an individual scheme?—We do not know the exact number, and if they were adjoining commons we would naturally infer that they might well be run under a mutual scheme.

450. That is the very point I have in mind. It seems to me that the management might be even on a county basis for a number of places. As we all know there are many parish councils which either do not function or are very weak and are not suitable bodies for managing things. You would not insist that there must be a scheme for each individual common, surely?—I think we would insist, after very deep thought on this question, that ultimately there should be a scheme for every common but a scheme may be combined for several commons. We were not looking upon the management as necessarily by a local authority. If it was on a county-wide basis you might run the risk that the actual local management was not local enough in its knowledge. What we felt was essential was the need for a Minister with responsibility at the top and his regional advisers, of course, to keep that side of it going; you cannot, however, work a scheme for a common with common rights and so on without extreme local interest and local leadership.

451. And yet you have just suggested that the Surrey County Council owns a number of commons and manages them. Does that mean the Surrey authority is not a suitable one for such a task?—

Some Surrey commons have probably no further chance of grazing—they may be suitable for further planting. They are not very typical in that respect of the largest amount of our area of commons. I think we covered the point, because where they are being properly run under a present scheme the Minister would not disturb it. But there are very few commons even in Surrey where there are not joint interests, and a scheme run only by the local authority would not necessarily be the best means. I do not know but I think Surrey only own about one common but contribute towards the National Trust commons in Surrey. We have nothing to quarrel with in that system.

452. Do you not think, Colonel Buxton, that if you had this suggestion implemented there would be more divergence in points of view towards commons of parish councils or between one small authority and another? You might very well have parish councils saying that the first essential would be to keep out the public, and taking quite a different viewpoint from that which you want?—I have not necessarily supposed that the Minister would appoint a parish council or a local council; what we would propose would be a small managing body.

453. The point in my mind is that it is much more important to have the grouping of commons so as to get, shall I say, a general viewpoint of the management than it is to emphasise, as you did just now, the extreme importance of the very local interest?—As long as local interest is thoroughly represented, satisfactory grouping would obviously be an economy—we should all accept that. But what we want is local knowledge in management and Ministerial control, and as long as the management did not get too high we should be satisfied. As you have carried the idea a stage further I think I ought to say this. Some people have suggested a kind of National Commons Commission, not on the lines of a body like the National Parks Commission, but one which would run all commons all over the country. To my mind such a wholesale system would utterly break down. We do not doubt that the Minister will perhaps need some advice, but we want to put the emphasis in management on local interest and knowledge, on the independence of the

management as appointed by the Minister, and on the Minister's responsibility.

454. If I may say so, that is going very much too far the other way. The County is the planning authority; the County is the highway authority; the County is the agricultural authority, for many purposes; would you not agree that the County is the natural unit for control of commons? Would that satisfy local interest?—That might satisfy the local interest, but so much of the interest in commons is also national. The difficulty for the local people always is this—and I treat the counties and boroughs as local—when they have a big common in their district it may cost them a mint of money owing to people from afar visiting it. As soon as the national interest comes into it, we get round to the planning of access to open country. It then becomes a very difficult problem except at the seaside where people take lodgings and eat food which all adds to the rateable value of the county. It is very difficult to ask your local ratepayers' representative to take a full interest in the national aspect of it. I hope, sir, you will devise a system which certainly brings in the counties with a full interest in their own commons, but we feel that the Minister of Agriculture, together with his regional representatives, who can and should be interested in this matter agriculturally, should remain responsible in co-operation with the counties and everybody else, hearing in mind the importance of local management, and the possibility of varying degrees of delegation at intermediate levels. Obviously, there are many reasonable ways of doing it, but we wanted to concentrate on those facts which we felt indispensable. Provided those points are borne in mind I do not think we should quarrel with other people's methods of filling in the picture.

455. *Chairman*: I think you have really dealt with this in one of the paragraphs in the Appendix dealing with schemes, have you not?—Yes.

456. In rather general terms?—Very general terms, but setting out just the stages we felt they would have to go through.

Chairman: In Appendix A you say:—
‘The scheme should contain provisions as to the body which will

manage the common. In cases of commons already regulated, this might be the existing regulating authority. In cases of other commons, representatives of local interests and other bodies should be included, so as to ensure that the common is appropriately managed to the best advantage of all who are concerned with it, and of the population as a whole. The managing body should meet not less than so many times a year, and should submit an annual statement of accounts and report to the Minister.'

457. *Professor Stamp*: I do not think you answered my point as to the degree of local interest?—The thing we are always afraid of in this is of piling on the interests who would have a delegate in the management scheme. Let the interests criticise the scheme, criticise the management, but have an impartial body established in control.

458. *Mr. Floyd*: Might I ask whether you would picture a commons committee of a county council, rather like the small-holdings committee, a practical sort of body? One feels that if the management is too parochial you may get a good deal of personality in it.—If they are delegates, I think, definitely yes, personality might enter. We have left the Minister a difficult task in choosing managers, we appreciate that. Having been on a county council myself I would not like to establish a new committee for the poor county councillors to sit on, but I am quite sure that the Minister would need some liaison between the County Agricultural Executive Committees and County Planning Committees in his job on commons. We may not have filled in the picture fully as regards organisation but we certainly should not object to your suggestion if the county council did not feel they were already over-burdened with special committees. It might need a special committee but I believe the agricultural committee of the county council could tackle it.

459. *Mrs. Paton*: Could I ask if you know of any commons anywhere in the country which are run under the sort of scheme you visualise?—Not one directly responsible to the Minister. There are commons run now by the old manor court system, which runs satisfactorily from the commoners' point of view for the turning out of cattle. In those cases the public access is accepted and

taken for granted. There is nobody to represent the public. There is nobody also to keep them in order.

460. Assuming that the Minister had overriding supervision as you suggest for your schemes, would that supply the need?—I think, quite definitely, we put the responsibility on the Minister for many commons. Each common is so individual in its extent of agriculture, woodlands or use by people for access, that we felt he must have freedom, and local people freedom also, to suggest a scheme along certain policy lines. It could be published and if people objected to it as being rather different from other schemes that would be taken into account, but all schemes should be according to local needs. We feel there is a danger in setting up a principle on which each scheme should be run by a central body mass-producing them.

461. *Professor Stamp*: But you do want central principles for things like rights of access? You want major principles laid down, do you not?—Yes, they would be in the law presumably rather than in the schemes. Although I think the actual application of byelaws or their equivalent regulations might have to vary from common to common I hope they would not vary in the general intention. It is that kind of variety that a scheme should look after.

462. *Mr. Arnold-Baker*: If you envisage central principles who would you propose should be able to enforce those principles assuming that some regulatory body is in breach of them?—The public or the interested parties act as watchdogs and can complain that such a thing is not being carried out according to the scheme, and the Minister who is answerable to Parliament. If he has an advisory body nobody is ever answerable to Parliament. It is always something that the advisory committee has advised, or that the Minister cannot take action without consulting them.

463. Advisory committees either do not advise or do not do anything?—It seems to me a very domestic matter how the Minister gets his advice for doing his job, but from the public point of view one wishes to know who is the responsible person and what is he responsible for. If responsibility is laid down in a scheme which the public have had an opportunity to object to, then I think stronger management can take

place, than if the public does not know where to press for better management. That is also why we say the managing body should report and submit accounts to the Minister because several excellent regulation schemes in the past have lapsed through lack of local interest which has died out. We feel this jog of an annual report is essential for people to know that things are going on all right.

464. *Chairman*: The mere fact of having to produce a report is in itself an excellent exercise, even if it is put straight into a pigeon-hole?—The fact that he has received one does make the Minister assume some direct responsibility.

465. Paragraph 11. Here I should explain that my question is based upon the fact that the Ministry of Agriculture pointed out to us that the law applying to commons is much stricter than for private land, or put it another way, the control which the Government possesses over the use of private land is much more effective than it is in respect of the commons. So I ask the question—provided that steps are taken to protect the respective interests of the public, the owner of the soil and the commoners, is there any reason why the law should apply differently to commons and to lands held in severalty?—Do you ask that on that part of paragraph 11 where we talk about the difficulty of giving grants?

466. No, I ask rather whether there would be an appropriate organisation, the managing body, for ensuring the objective in respect of which such grants are made?—The difficulty now is that a grant has to be made to individual commoners, whereas the grant would then be made to a specific body, a responsible body. The commoners would have to be under some kind of sanction to see when they got the grant they carried out the work satisfactorily for which it was given. Without a body to do that they really could not get the grants. Perhaps, too, they should not get the grants if the grants were liable to be wasted by some other commoner coming in. That we feel is the essential part. There is no difficulty in giving grants on commons quite similar to those for ordinary land and to other grants for recreation provided there is a responsible person to whom they can be entrusted and who can be pledged and sanctioned

to carry out the work for which they are given.

467. In your evidence you mention grants in respect of control of parking, games pitches and warden. Are there grants for those purposes?—*Mr. Williams*: Not specifically, Sir. There is power in local authorities, that is to say, district councils and county councils, to contribute to the expenses of looking after open spaces, whether within their own area or not. That is a general power, it does not relate specifically to pitches, but if the grant is used for recreation I think it would imply the upkeep of pitches.

468. Is there any legal power to enable anybody to establish a golf course or cricket pitch?—I think the position is that the lord of the manor as owner of the soil can establish a golf course, provided, of course, it does not interfere with the rights of the commoners; and as a golf course is mostly grass, and grazing the most important common right on most commons, I do not think that difficulty has arisen. For instance, there is a golf course on Nuffield Common which occupies quite a large part, and also one on one of the Esher Commons. I do not think any difficulties have arisen in that way.

469. Does that mean cattle can roam across the green and any golfer who pushes them off is committing trespass to the cattle?—*Lieut.-Colonel Buxton*: On the cricket pitches it creates a special form of problem. I think it is got over very often by fencing the pitch on three sides in the directions from which the cattle come. When you get to the golfing green on the common fencing it off from the cattle is just such another problem.

470. Fencing would require the permission of the Minister, under Section 194 of the Law of Property Act, would it not?—I do not think, as long as it does not obstruct, it has ever been challenged. If it only keeps cattle off three sides I do not think it is regarded as an obstruction. I do not know whether legally it is, but that is the way most people avoid getting it raised as an obstruction.

471. I think that is a new interpretation of Section 194?—I am sure it is.—*Mr. Baker*: I think it might be a case of *de minimis*. We have never had a complaint of fencing off a green, or anything of that sort. It is so small and so

slight an obstruction you can step over it. It has to be something a golfer can get over.

472. *Mr. Floyd*: Would not most golf courses rather welcome grazing by sheep, which is good for the grass?—*Lieut.-Colonel Buxton*: The ones I am thinking of do not care for it. The people who walk on these commons are usually very fairminded about the golfer. You might get one obstructionist who insists on sitting down and having a picnic, and you might get the occasional golfer who insists on screaming 'fore' and driving a ball into the middle of the picnic, but generally speaking there is a *modus vivendi*.

473. *Chairman*: Then we come to paragraph 12. Can you tell us more about these manorial courts? Were they concerned with the common rights of freeholders as well as with the common rights of copyholders?—Some of them still exist but they are mainly concerned with grazing.—*Mr. Williams*: If I may give a general sketch, I believe there was the Court Leet, which was a court of copyholders and was mainly concerned with keeping order and punishing small offences, a very minor criminal court, which I think was the progenitor of the Courts of Quarter Sessions. Then there was the Court Baron which was the court of the freeholders; I think that mainly dealt with management questions and adjustments of rights, and what sort of animals could he turned out, and that sort of thing. That was a freeholders' Court. Then there was the Court Baron of the copyholders. I think very often in practice the three courts were held together. Everybody came into the hall of the lord of the manor and part of their jurisdiction was criminal and part was civil. I have actually attended a joint court of that sort which was held in the Manor of Dorney, one of the cases referred to in the Appendix to our memorandum. I think the only reason for that sitting was to consider what public rights of way over the common the commoners and the lord of the manor should admit. They were also discussing the question of the repair of gates on the roads crossing the common which are often run into and damaged by motor vehicles.

474. These courts have not been abolished, have they?—No.

475. The only change which has occurred is that the copyholders have become freeholders under the Act of 1922?—There is no regular necessity to hold these courts but when held they are a very useful form of meeting of the right-holders to decide how to run their common.—*Lieut.-Colonel Buxton*: Yes, and some are still active for that very express purpose. I think perhaps the Farmers' Union could probably tell you from their branch offices of the number that are still active. I think that would be a useful source of information. There is this Manorial Society also, which keeps a list of the active ones, and there is the New Forest system with the Verderers' Court.

476. We were told in evidence that the effect of the Act of 1922 was to discourage people from holding these courts any longer, and it seemed to me that the Act of 1922 really affected the Court Leet, the court for the copyholders?—*Mr. Williams*: I do not think it was intended to discourage the holding of a court. I think it was merely that with the abolition of manorial incidents and the enfranchisement of copyholds there was not the same necessity to hold the court.

477. *Dr. Hoskins*: I think that the manor courts were concerned with the common rights of the free tenants as well as the common rights of copyholder tenants. Is not the freeholder, strictly speaking, the tenant of a manor and his common rights were considered just as those of the copyholder tenantry, and he had to toe the line as much as the copyholder?—*Mr. Baker*: The copyholder's title was an entry in the rolls of the court and now that has gone, there is nothing for the copyholders' court to do in the old sense. Its old functions have really gone. Of course the freeholders had a right of common as actually part of their freehold whereas the copyholders' rights varied according to the custom of the manor.

478. *Mr. Floyd*: The real reason why the Court Leet—the manorial court—has fallen into abeyance is connected with the break-up of the agricultural estate and the general set-up of the lord of the manor, who had a very great interest in the whole of his property. It was he who held these courts. Now nearly all of these rights have gone, except sporting rights over the common

which are often of no value, and he really has no further interest. Very often the lordship of the manor is entirely divorced from the ownership of the local land and so you have no longer a natural chairman of the court, somebody who is interested to promote it.—*Lieut.-Colonel Buxton*: Those which survive do serve a useful purpose.

479. The Society does not suggest the revival of those fallen into disuse?—I suggest we should not knock the existing ones on the head until there is a scheme to take their place.

480. *Chairman*: On paragraph 13, which is mostly historical, I ask whether the Society agrees with the phrase used on behalf of the Ministry of Agriculture, that from an agricultural point of view common land was 'frozen' by the legislation of the nineteenth century? The rights have to be maintained as they existed in the middle of the century because of the difficulty of altering those rights under the existing law.—To that extent I suppose they are 'frozen'. We feel ourselves they are more frozen by neglect and so on than by the handicaps under the law.—*Mr. Baker*: It implies that agriculture means 'arable'; one feels that must be read into it; if not then I do not think agriculture is frozen on a common. If a common is properly managed as grazing ground, that would be agricultural use.

481. If the commoners and the owners of the soil, with the Ministry of Agriculture and Parliament, are prepared to agree?—They can run it as common property, as a grazing ground; so that the administration is rather social than legal.

482. On paragraph 14 my question is, except where defence needs are paramount, is the question one of economics, and owing to modern techniques may it now be more economic to use for crops common lands formerly used only for grazing?—On the hill farms one must look at the general rural economy, and at its balance, rather than at the peculiar technique that is easiest for a given bit of land. Certainly the technique of crop growing is more advanced than the technique of stock-raising; but I think the controlling factor is so often the need to maintain a general balance. Even though land may grow a better corn crop than anything else in a hill farm,

we have nevertheless got to think of what the beasts are going to be brought in on in the winter; in the general balance of the farm economy that is more important than some special new technique that would make one bit of ground grow more than another.

483. It is not practicable at present, as the law stands, to make that adaptation, is it, without very great expense?—No; that is true, it is not easy to change the system from the old one.

484. On paragraph 16, we shall of course examine the experience of the New Forest, but if the suggestion in this paragraph is generalised, does it not mean that every one of the commoners must agree, and continue to agree, to depasture only T.T. animals?—It would; but I think the trend and the ordinary pressure of marketing are all towards T.T. stock everywhere. I do not think they will find it a hardship gradually to turn towards T.T., and when it comes to commoners, I think the experience of the New Forest is that the small farmer with stock out on the common is less of a problem than the big farmer who is continually changing his stock. It is not a difficult problem to apply T.T., except where the common becomes a refuge for clearing up all the non-T.T. animals on farms. It would be necessary for all to agree or be forced to agree that stock, before it is turned out on the common, should be clear of T.B. but they would want a veterinary certificate for a good deal more than that.—*Mr. Baker*: The ordinary farmer will not be able to sell his milk very soon at all unless his cattle are certified. I think we shall get that in due course.—*Lieut.-Colonel Buxton*: It is now a very awkward stage, because in the interim room has to be found for the non-T.T. cattle while the changeover takes place.

485. This has been pressed rather strongly, that the existing law prevents the fencing of the land so as to enable cattle to be segregated, whereas you rather pass it off saying it is only a passing phase in the policy of hygiene in cattle?—If we are always going to have double fences against our neighbours as our only protection, then the common would have to be fenced too. But gradually people are having to take more risks with their cattle. Most of us keep up double fencing because we do not like our neighbour's cattle; but there is more con-

sidence in other people's T.T. stock than formerly. On a common fencing would be a terribly expensive thing in many cases, but if it is necessary to fence to protect the common grazing herd from some dangerous neighbour who is not T.T., then there is nothing under a scheme to stop the common being fenced for the protection of T.T. cattle. Under the law at present cattle may and do stray anywhere; you may turn out T.T. cattle trusting your neighbours but they may stray away somewhere else; it is a real danger in the present phase.

486. *Professor Stamp*: Has the Society any comments to make on the possibility of tethering animals?—I have very little experience, except for an odd Jersey cow, and on all commons there is a certain amount of tethering. Usually the odd horse is tethered because he is such a nuisance if he is not; but tethering is not practical. We have been asked whether it applies generally abroad, but where there are commons abroad it is much more usual to have an old woman or a child, or hells round the animal's neck, and to look after them that way rather than to tether them. Tethering is not satisfactory.

487. We were told that the cost of a cowherd or the equivalent was out of the question in this country, but that the possibilities of tethering to overcome some of these difficulties had not really been fully examined?—It would be wrong for me not to agree with that. I tether my two hulls on my lawn to keep that down, and it has been very successful; but I do not know about tethering on a grander scale.

488. *Mr. Floyd*: Tethering was very general in the north of Scotland—in Caithness—I remember as a boy all animals being tethered.—*Professor Stamp*: It is very common on the Continent still.—It does control where the beast grazes.

489. *Mr. Lubbock*: It requires fairly good pasture before you tether your beast.—Or a long tether. You can tether them on a long rope which slides up and down.

490. *Professor Stamp*: It might be a good way of keeping parts of the common nicely grazed for the benefit of the public?—It is a serious matter to consider, I think. I cannot see that it will be very expensive, whereas fences, unless a gate only at the end of the

common is required, bring up the problem of expense.

491. There has been tethering on common land in the vicinity of London in the last fifteen or twenty years. Ashted Common was occupied by tethered cattle and was kept in a beautiful condition for public access; now that tethering has gone the common is becoming useless.—It is not right to jump to the conclusion that it is impracticable, just as people should not jump to the conclusion that shepherding is impossible among communal herds. It is the doubt and suspicion between commoners that prevents them coming together to employ a communal shepherd. I still know of communal shepherds in Scotland; but it cannot be worth while except for a large number of stock, and as we have not been able to support large numbers of stock on our commons in recent years, it is worth considering how that would affect the economic problem for a large number of them. We cannot expect to get a small boy or an old lady, as they do on the Continent, to take charge of the cattle all day.

492. *Chairman*: I had better put the first question on paragraph 17, although you have dealt with it incidentally, because I think in a later paragraph you rather suggest that fencing should be merely temporary fencing; so the question I put on paragraph 17 is, I take it the Society does not object to fencing, provided that provision is made for access by the public where it has been customary?—Paragraphs 17 and 18 deal with the present position. I think we cover the future in paragraph 20. There is the possibility of some confusion or misunderstanding between paragraphs 20 and 36. In 36 we go into rather greater detail than in 20. For certain purposes temporary fencing is the obvious solution. A farmer himself, for ley pasture, is apt to use temporary fencing and shift it about. We would always prefer it to be temporary fencing and shifted about. But our point in those two paragraphs, which I do not think really contradict each other, has been that any fencing should be under a scheme. The scheme should make provision for the fencing and there should be means of access over it. Then it is all right. We have also said we do not think there ought to be further fencing without an amendment of the scheme because of the present public fear and suspicion of

fences. It is safest, we feel, in order to get people used to the fact that fences are benefits and not the reverse, to keep all fencing under a scheme, but we have no objection to it once it is under a scheme and done with a known purpose.

493. *Mr. Floyd*: Would you object to electric fencing under a scheme where there is public access, or is it dangerous?—I think the public are thoroughly used to electric fencing. You will get somebody screaming that he was hurt by it, but it is such an ordinary agricultural feature that we would even recommend it in certain cases. My own feeling is that in the rough condition of common land electric fencing is not always suitable. You cannot have a high growth with an electric fence; but I do not think the public should object in any way to such a fence, which is an ordinary farm device and does not do more than make you jump. We have always been strongly opposed to barbed wire at places where there is public access, but where it is necessary to protect cattle the public should surely learn how to cope with an electric fence.

494. *Chairman*: With regard to paragraph 18, does this mean that the Society does not consider it necessary, when the Minister considers an application under Section 194 of the Law of Property Act, to pay attention to the benefit of the neighbourhood, provided that access by the public is not prevented?—I think here the Minister of Agriculture is rather frozen by his Solicitor! We have always urged him that it is to the benefit of the neighbourhood to have control to ensure good public access by grazing, and that for fencing for that purpose he might stretch a point, but undoubtedly it is difficult under the present law. We agree that 'benefit of the neighbourhood' is properly now applied to a far wider area than just the immediate neighbourhood, but we have sometimes wished that where it is beneficial to have cattle on the common, the Minister could agree that a fence was to the benefit of the neighbourhood; but you will appreciate there is that element of doubt and it does freeze things up a bit.

495. *Sir George Pepler*: I have a question on a point in paragraph 18, the physical joining of landmarks. Does that mean visual, that you can see from point to point the landmarks, and was that used to institute a private right?—

In the old days I agree it was very often done by a line of marks, but when it came to inclosure a man, or in the royal forest the Crown, took a part of the land away, for tree growth, from the commoners, and threw up a bank. It has become natural in past history to look upon that fence as a tangible sign of a claim to property, whereas now we depend on the land register, maps and so on. Now that we have that method of safeguarding rights we would press that a certified map is part of a scheme. Thus the status of the land can be settled once and for all in a legal way which admits easy reference. There is then no earthly reason why people should be afraid of fences. But they had a perfect right to be afraid of fences in the past, because the idea was to put one up and say 'This land is mine'. In retaliation one pulled it down and said 'No, it is not', and the fences had a bad name in consequence.

496. *Chairman*: That brings us to paragraph 19. Not only the Society but other witnesses too have suggested that one of the things which we ought to recommend is the creation of a register of common rights. That causes me to ask a series of questions. First, the investigation of common rights would be a lengthy and difficult process. Would it not be sufficient to register claims without determining rights?—I think whatever process is applied to the straightening out of common land, the investigation is bound to be long and tedious. That is why we are so dead against a general survey which might bog it down for about eight years; but recommend instead taking cases as they come. If there is a purpose in that, people will readily come forward, notice will be given and the whole thing should be cleared up. I think it will not take any more time to get rights properly registered and fully ascertained. Whatever investigation is undertaken it is not going to be an easy matter.

497. That really is my point; is it not a long and exhaustive legal investigation to find out in many cases what the rights on the commons are?—It does not take an awfully long time when you concentrate on one case at a time.

498. But it would be expensive. Would not someone have to pay the lawyer who is finding out what the rights are?—For planning purposes and foot-

path surveys somebody has had to pay the courts for that.

499. I would have thought the investigation of a footpath was much easier than the investigation of common rights, which are so numerous and so difficult.—We feel it is so important not to get bogged down by the difficulties that the investigation must be taken case by case. Secondly you will not get a practical answer out unless there is a clear national intention to do something with a particular local bit of land and to do it properly. We think that will hurry the process up quite a lot.

500. Really the question I was asking is whether in fact it would not be sufficient to register claims only and then to have a period of prescription of say thirty years, so that at the end of thirty years you would have a register not of claims but of rights.—Meanwhile something would have to be done towards getting schemes together. If you are going to have a scheme you must permit public objections and so on. I would hate to wait thirty years on this very important matter.

501. There would have to be opportunity for public objections and so forth, but there is no need to have all the rights ascertained when you have a scheme for a common, is there?—Except when it is a hill common, when there may be a good deal of poaching and the possibility of overstocking. Each commoner should know and must know—but half the trouble is that they do not always know—the total stock on the ground. The number of stock would have to be controlled, but how could the scheme go forward if odd commoners were turning up periodically and staking a claim?

502. If it was a claim contrary to the scheme as worked out then he would have to challenge the validity of the scheme; would it not be his responsibility and his expense?—There would in fact be two parallel processes going on; on one side the scheme and on another a register over the thirty years at the same time. If that is your idea, I wonder if it would work in time.

503. *Professor Stamp*: Would you agree that an essential thing is to get a register of all the commons as soon as possible? You speak of one common coming up, I take it when there is a question in dispute, and then for the

whole position to be examined, but surely the important thing is to get a register of all commons as soon as possible, is it not?—We would not confine action to cases of dispute; we would encourage it in cases where there is the opportunity of doing something with a particular common.

504. You say a particular common, but would you not, instead of saying a particular common, say a register of all commons?—We have suggested in the end that ultimately the Minister should be responsible for a scheme for all commons; but you cannot carry out a register of commons until you know what the common rights are, and so on.

505. But you could register them according to the principle which the Chairman has laid down, a register of commons with a map thereof, plus a statement of the claims. The schemes would go on, and would assume the validity of the claims.—The proposal is that in making a scheme, there would be an advertisement and any person claiming rights of common would be requested to come forward and stake a claim. I think you would get a tremendous number of unfounded claims on a great many commons. If you go forward with a scheme at that stage without having ascertainment of the rights, are you not going to have a great deal of trouble and confusion with people who are not genuinely commoners claiming to come in and exercise their rights? What you want to do is to get everything settled up when the scheme is made.

506. *Chairman*: I think that is true, but will not your proposal involve the same thing, only you would have to take a decision within possibly a year or two as to whether these claims were right or not?—Yes, it would probably take that time.

507. We still have the problem of where the money is to come from to pay for it.—I am afraid we feel that marginal land commons cannot stand on their own feet. If the nation wants to make the full use of commons it will always cost it money to do so.

508. Does that mean the grant from local authorities referred to in paragraph 33?—I should have thought this would have to come from national sources.

509. *Professor Stamp*: Would it not be the case if there were an im-

mediate register of all commons in a very large number of cases there would be no disputed claims and they could be registered?—*Mr. Baker*: It is very difficult to dogmatise about that until you get down to the job; it is difficult to say how many cases would go through quite easily and how many would cause difficulty; but there are very large numbers of difficult commons, and unless they are going to be all investigated simultaneously by a large number of officials, you would have to go round one after the other. It is bound to take a very long time indeed to get through the whole lot.—*Lieut.-Colonel Buxton*: We have always felt that the register of commons would take an enormous staff and take a long time before anything happened. You could not, I think, accept a statement of claim as anything which you could depend on without going through the further stage which we suggested. The trouble which would be caused among commoners, with people alleging that what one commoner said was hogus and what another said was perfectly genuine, would upset the incentive to get on with something practical. Commoners are terribly jealous of people jumping claims, and in fact they have a right to be, because people do jump them.

510. Do you not think if your Society had started to prepare a register of claims in 1865 you would now have it finished?—I am absolutely certain we should not. We have thirty or forty cases a month of trouble over commons to deal with and even with four times the staff I doubt if, with all the changing circumstances, one small voluntary society would have got anywhere near a complete register. That is why we believe in a piecemeal method.

511. *Chairman*: You do agree it would be an expensive process, and rather lengthy?—Yes; that is why it should be spread over a longish time and the most urgent cases taken first. On the question of claims, we feel, once there is a public inquiry, there must be a time limit to claims; on the other hand, the use of common rights depends very much on economic circumstances and we feel it very wrong that a farmer should lose his right just because his predecessor did not bother to register it. That is why it is so important for the

purpose to be fully apparent—something worth going for—when you have an inquiry into claims. Once you have got that, you have given notice, and if the man is foolish enough not to put his claim in he has only himself to blame.

512. It may not be his fault; he may be in Australia or in hospital.—That is why we suggested the loop-hole that the claim might be considered subsequently; but to get the business cleared up it seems to me there must be an incentive, a stated purpose, and there must also be a deadline for claims, otherwise the real users—some of them perhaps rather illiterate—will not bother.

513. *Professor Stamp*: I am completely puzzled by the attitude of your Society. I understand the Society wants to secure rights of public access to all the common land, and now we hear that the whole matter must be dealt with piecemeal, little common by little common, as difficulties arise. It seems to me those two aims are completely contradictory.—We have access to ordinary common land under existing practice; we only want to safeguard it *de jure*.

514. *Mr. Arnold-Baker*: I must say I am puzzled too, from another point of view. If we have the access, why do we want the register?—For the commoners—to put the common to work. Access by itself is not nearly of so much value as if the common is being properly grazed.

515. Therefore a local register would be perfectly satisfactory, would it?—Yes.

516. But there would be very little object in having a national register?—The national register of commons would in the long run be comprised by the schemes registered with the Minister; that is what we should hope for.

517. Because the Ministry under your view would have to know about them, the register would accumulate by itself under your proposal?—Stimulated by the Minister, who would see that the pace was kept up.

518. What I am trying to get at is that this national register and the entries on it would not of itself create rights or be a safeguard of rights?—In our suggestion it is all part of a scheme. A scheme would be devised and notice

should be given of objection. The register of rights to participate in that scheme and their certification would all be part of the investigation. The whole thing would be tidied up for that common and the position would be that henceforth if there were changes, authority would know what those changes were, but the registration would be done locally and not on a national register.

519. *Chairman*: There would however be in fact at the Ministry of Agriculture a collection of these schemes in the same way as there was with the Inclosure Awards.—Yes, because we ask that the public should have access to all commons: that is all that it is necessary to ensure access subject to what appears in the scheme.

520. *Professor Stamp*: That is still my difficulty. What is the use of the public having the right of access to all commons by law, unless you know where all the commons are? That must mean a national register of commons before access has any meaning.—At present, the law gives us a right of access to some commons, and we have *de facto* access to others. We wander about on a common until somebody tries to push us off for trespass. We then prove it is a common. There may be a cheaper way of going about it, but I cannot see any difficulty about access.

521. *Chairman*: Would there be any need for legislation for commons in urban districts to which, under Section 193 of the Law of Property Act, you have legal right of access?—We have suggested that a common may have a fence. Its character as a common must be established so that it cannot be overlooked; there may also be difficulty in controlling the access until you have a scheme, and that is important. You may need by-laws about litter and so on, which would make a scheme the more desirable.—*Mr. Baker*: With regard to Section 193, we have no register of commons the whole or any part of which are in boroughs or urban districts; the Section simply applies to them automatically if they happen to be so situated. What we are asking is that it should be applied in the same way to all commons. With regard to commoners, I imagine there would be a schedule of holders of common rights attached to a scheme.

That would be the register and would be filed with the Ministry.

522. *Mr. Lubbock*: Your proposal is that legislation would enact that in the framing of a scheme for a common rights of access for the public would be ensured subject to the details of the scheme?—Subject to the details, definitely yes.

523. Would it be a general enactment declaring that public access is thereby granted to all commons; or would it be in the framing of a scheme for a common?—*Mr. Baker*: I would not wish any confusion between Section 193 and access under a scheme. In any case it would be some time before all commons could be made subject to schemes. Meanwhile there is no reason why Section 193 should not be applied automatically straightaway. Then as a scheme was framed for a common it could be brought into relation with access under Section 193 and the whole thing tidied up. That is roughly the idea.—*Lieut.-Colonel Buxton*: We have said that there should be a public inquiry into a scheme before public rights were taken away. If they were then taken away, people would appreciate that it was reasonable under the scheme that they should temporarily lose the right of this, that or the other part of the common. I think it would be perfectly safe to give the public as a right at law, the *de facto* access they have got at present, and perhaps consider it afresh under a scheme, because it would be clear from the Act that schemes were contemplated. What we object to is the present 'open country' difference; we wish to start with the access we have already got to a common and which we continue to enjoy until we may perhaps in certain places be temporarily prevented from using it. We prefer that to the other way, where under the Access to the Countryside Act, which admittedly makes a concession, once land is used for an excepted purpose the public can be deprived of access. That is quite fair with a new provision, but under the old provision for commons it should go the other way round.

524. *Mr. Floyd*: You mentioned a public inquiry to ascertain rights. May I ask what sort of inquiry you envisage? Would you think somebody like a county court judge would go on circuit in each county to hear commons cases, or would you have a public inquiry such as you

get when a piece of ground is going to be acquired by compulsory acquisition? What form of court would be convenient for ascertaining and hearing evidence as to rights?—We merely thought the Minister of Agriculture himself would make a scheme, either because interested parties asked him to or because he originated it; he would then publish it and objections would be heard at an ordinary court of inquiry. The degree of elaborateness does a little depend on what happens at the final stage such as whether the Minister of Agriculture simply puts his signature to the scheme with no further action such as laying the scheme before Parliament in one way or another. The two stages would have to be balanced; but I would think if the Minister gave public notice of the scheme, at any rate on the first round, people would trust him to be honest and play fair, and having heard the evidence to certify the scheme afterwards.

525. That was not the point of my question. It was not so much the vetting of the scheme, it was the ascertainment of the validity of the rights. It seems to me a very highly specialised job, hearing evidence from commoners as to their rights, and it is a question of who would be the sort of people to determine whether a man had a right or not on a common.—I think the local representatives of the Ministry of Agriculture would be the best people, rather than a High Court judge. The commoners would have the opportunity of putting their claims and the Minister would have to investigate them. There should probably be an appeal to a High Court judge if a man's rights were taken away and he did not like it, but I hope this could be dealt with locally on the same sort of principle as rights of way; probably appeal to a law court is the right answer to tidy things up.

526. *Chairman*: In the case of rights of way there is an appeal to Quarter Sessions.—There should be some such appeal to make people feel they had got a fair hearing in circumstances of a recognisably legal character, but many instances would be able to be settled without taking up the time of a High Court judge.

527. *Mr. Floyd*: You would not like anything like the Agricultural Tribunal,

or that sort of body?—I think when it comes to points of law we prefer lawyers, but when it comes to points of fact really if everybody has confidence one can go a long way with an inquiry as long as as it open and above-board and notice is given and proper time is allowed; people will accept it until it comes to a legal point and then one mistrusts anybody but the lawyer giving a decision.

528. There are two points; one is objecting to the scheme as such, and the other is the ascertainment of common rights; that is the thing where I think the law will come in, where somebody with experience of hearing evidence would be necessary.—*Mr. Williams*: It would probably make the proceedings much quicker if somebody who was experienced were to conduct them.

529. *Chairman*: May I put just one other question on this paragraph. Has the Society any knowledge of what are popularly called commons, in which in fact no commoners now claim rights? It has been given in evidence before us that there are such things.—*Lieut.-Colonel Buxton*: There are commons written on the map where of course there is agricultural land. There may be commons, and we believe there are, without any lord of the manor, but generally speaking when people come into our office it is to prove whether or not lands are commons and they have rights over them; the lands are proved to be commons or it is accepted that they are not. There are, we are sure, a lot of borderline cases with only an odd commoner or two and many without a lord of the manor whom we can find, but we cannot give a list of how many there are. If these facts were already known that would save a register.

530. I am inclined to think we cannot go very much further to-day, as some of us have to leave. I think the rest of this memorandum will take another day, so would the Society like to be heard some other day?—We will leave it to you; we are at your disposal any time we are required.

Chairman: Thank you very much; the Secretary will communicate with you so that we can fix a date to suit you as well as the Commission.

(The witnesses withdrew.)

Thursday, 3rd May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

LIEUT.-COLONEL E. N. BUXTON, M.C., MR. J. B. HENDERSON, O.B.E., MR. HUMPHREY BAKER, O.B.E., M.A., and MR. W. H. WILLIAMS, M.A., LL.B., on behalf of the Commons, Open Spaces and Footpaths Preservation Society.

Called and Examined

531. *Chairman:* It is very good of you to come again, Colonel Buxton, with your delegation. May we go straight ahead? I think we were on paragraph 19, and we had taken my question about commons where no-one claims common rights. There is just another question I would like to ask with regard to that. Do you know the register which is used in the New Forest?—*Lieut.-Colonel Buxton:* I have not seen it but I know where it is kept and how it is dealt with.

532. Can you tell us whether that is the kind of register you had in mind for common rights? It is rather an unusual one, of course, because it is an unusual common.—I should imagine any form of register that is conducted through the Verderers' Court, which is an old court, would be a very thorough and suitable one. It is a statutory register.

533. The difficulty is it would have to be kept up to date. Somebody would have to take that responsibility and record when there are changes in the ownership of land and people succeed to rights, or when rights are sold, as sometimes happens.—Yes, it would be essential for the Management Committee under the scheme which we propose to know throughout who are the people who have rights. They would have the responsibility of keeping a register but presumably those who exchanged a right with somebody else or who had passed

it on should themselves also have a responsibility of registering.

534. The responsibility would be with the private individual, but would the register be kept by the Committee as you contemplate it or by, say, the County Council?—The Committee cannot function without a live register, stating who is who, who has rights and who not. I would have thought they must be sure that their register is a live register and up to date.

535. The difficulty that I was foreseeing was that the Committee would consist mainly of persons who were interested in the land and so it would not necessarily be wise to give them the responsibility of keeping a live register.—Work of that sort does become a problem. I think we should see no objection to it being in the hands of a local authority. Who is the best responsible authority to keep that register depends on just what the chain between the local committee and the responsible Minister may be. It was suggested last time that possibly the county would be intermediate. I suggested that the county would hardly want a special Commons Committee but that naturally their Agricultural Committee would be interested. But it is when the details are filled in that the responsible authority to maintain a register can best be selected.

536. *Mr. Arnold-Baker*: The County Council would in most cases surely be rather a long way away, would it not, for keeping the register?—In my opinion the clerk or secretary or whatever he is called to the Management Committee would be as efficient a person to keep the register as, say, the local parish clerk. On the parish council the clerk is sometimes a rather evanescent person.

537. *Sir George Pepler*: Most counties have area planning committees and officers. Is it not a matter very much tied up with government and county planning, and would they not be just as good a link?—Again I emphasise the agricultural aspect. If there is a regional agricultural organisation our register of rights might be with that.

538. But it comes down to the use of land, does it not?—Provided people know where the authoritative register is, I would not say the county is too far away because the local active body will have a copy. In fact there would be provision made that nothing was put in the register without notice being given to the managing body. In that case if the official register is kept at county headquarters I do not think it would hurt anybody.

539. *Mr. Floyd*: Might I ask whether you would agree that the County Agricultural Executive Committee might be the people to keep the actual register—we are talking now about the rights of commoners with regard to stock and that sort of thing? They might have to deal with cases of T.B. and the like. I should have thought they would be more capable of dealing with this matter than the planning people. The technical problems of commons are mostly agricultural.—*Chairman*: Yes, but this is simply a question of having a register of legal rights. It must be somewhere in some office in which there is a legal expert qualified to register rights. It is not a matter of general talk about the claims and so forth; the rights would have to be proved.—Just as there is only one government to several Ministers there is only one county council office to many committees. I should have thought the clerk to the county council is perhaps the right person; whom he deposes to do the work is another matter.

540. *Professor Stamp*: Is this not very closely bound up with whatever may be the future action with regard to compulsory registration of land? I think I am right in saying that in principle the government accepted the Rushcliffe Report that there should be compulsory registration of title in due course. The difficulty, I believe, is in the preparation and so on, so for the moment the proposal is in abeyance, but as far as I know it is accepted in principle. If it is accepted in principle then the common land register would fit into that wherever it is kept, would it not?—Our Society has not gone into the relationship to land registry, but it seems to me essential that the commons register is tied up with all the other land registers.

541. *Mr. Arnold-Baker*: With Inclosure Awards one copy is with the county council and the other is the parish, and there seems to be no reason why one could not make exactly the same kind of arrangement.—Yes, as long as there are two copies.

542. *Chairman*: Would it be reasonable to provide by law that any claim which was not registered within a period of, say, 30 years from a fixed date should be regarded as having lapsed? That question is formulated primarily in terms of claims rather than of rights. But in a later paragraph of the memorandum, you suggest that the register is not apparently to be closed to claims, that anybody who suffers from the fact that the register does not state his right can re-open the question.—In the first instance we felt that claims, once notice had been given that a scheme was afoot and the position was being cleared up, should be registered in a short period, much less than 30 years. We felt, as you I think said last time, that a claimant might be in Australia, but there must be some discretionary power in the Minister, to accept a reasonable claim of that sort being laid. We have further said that if somebody had been entirely missed out of a scheme there would be an opportunity for him later on—nobody would be debarred from presenting their case again if there was reason for a new scheme. That seemed to be the fairest way for the man who unwittingly was left out. We want to distinguish between the period in which he could make a claim and the period in which

he would lose a right. The exercise of common rights is valuable according to the economic condition at the time. A man may have great use for his common rights at one period; at another, war conditions or something of that sort may make it undesirable for him to use them. It is unfair on him to lose them just because he does not exercise them, and it is unfair for his successor to lose them because his predecessor was careless. That seems more wrong still. We feel that claims must be made and must be substantiated as early as possible. Thirty years for that would seem to us too long to get things straight, but at least thirty years should elapse before a man lost his common right absolutely.

543. My question really related to the final period for presenting a claim. If a claim is not made within thirty years then clearly it should not be raised after thirty years.—I think that is reasonable.

544. So that one cannot go on opening the register long after the evidence has disappeared?—No.

545. If it were found that a common which had normally been open to the public is no longer subject to claims of common rights, what action should be taken?—That is a difficult point because there may be commons where, when the Minister comes to make a scheme, he cannot find a lord of the manor, or there may be few commoners. I think there is most difficulty if there is no lord of the manor, and we suggest that there needs to be some national machinery for a transfer of responsibilities in order that the common may be carried on under proper management. If there are too few commoners to run it, we have suggested that there should be power with consent of the commoners for the number to be increased, say, from the freeholders of a certain parish. A common is not necessarily parochial, it may be wider. By consent of the commoners it might be wise to strengthen the commoners' role by taking in more people. Anything of that sort must be under control, because as soon as there is agistment to replace commoners' use it tends first to surcharge the common and then, because nobody knows how many cattle are going to be turned out, somebody ceases to turn out and then there is scarcity and poaching. But providing it is under a

scheme there is no reason why the necessary extra grazing rights should not be created. The responsibility may be too big on a large common for only one or two small commoners, and it may be wise to increase the number of participants. But as long as it is under control we see no reason why with the consent of the commoners it should not be done.

546. It is done in the case of the New Forest, is it not? Because they have not sufficient grazing by commoners they let grazing rights to persons who are not commoners.—It has happened in the past, but it is liable to abuse if it gets out of hand and is not done by general consent. It is the obvious way to balance the grazing—if the grazing is too weak for the common, to take in grazing from outside.

547. Are there not cases in which there may be even no commoners at all and yet it has always been treated as a common and members of the public have in fact had access to it?—We believe that with proper management of commons such commons can well be taken into the same system. When the Minister comes to enquire—he is responsible ultimately for seeing that every common has a scheme—and finds no commoners or claim to public access he will then have to judge whether to have a scheme or to use the land in some other way. It would want a special procedure. It will arise, I think, in the odd case where there is land which lacks ownership.

548. I think there is one in Cambridgeshire in which the lord of the manor does not seem particularly interested and there are apparently no commoners, or nobody knows who the commoners are. Yet it has been treated as a common for a pretty long period. Are there other examples?—We think that odd ones will be found and that it is very proper when everybody has always considered them as commons that they should be brought into the practical scheme for running commons. That does mean finding an owner; and we can think of no other owner than the nation under those circumstances. There must be some provision, I think, for taking over an ownerless manor.

549. It becomes in fact a public open space?—Yes, but subject to the same type of procedure. It seems unfair that

the commoner and the public should both be knocked out because the lord of the manor cannot be found. It is better to make the State lord of the manor—inevitable, I think. Somebody must take it over.

550. Then paragraph 20—I think the important words there are 'improved as a common'. Is that not so? It excludes the possibility of inclosure in the technical sense.—Under a scheme, yes, but we are not excluding it as heretofore where there are very special reasons. It can go through the process of inclosure.

551. I thought you said last time that the Society did not approve of any commons ceasing to be commons or ceasing to be open to the public.—We do not approve—we cannot approve—of that, but there may be occasions for it. All we ask in our evidence is that common land shall not be taken for a purpose which is not an initial and primary object of commons without going through some safety procedure, as it has hitherto.

552. You mean inclosure should be possible but it should still be by a Provisional Order?—It must be possible as a last resort, if you cannot do anything else with the common. Partial inclosure has very often been allowed in the past and consented to as the way out. All we ask is that there must be full safeguards, not less strong than we have got at present.—*Mr. Williams*: I think it is paragraph 41, Sir, where we really set out our views on that topic.

553. So you would in fact approve of the inclosure procedure, which is extremely complex at the moment, being made cheaper and quicker, provided there are adequate safeguards?—*Lieut.-Colonel Buxton*: Yes; provided there are adequate safeguards. Another point I think we can make is that if you have the schemes we propose, it is going in itself to simplify matters and minimise the time spent over the odd case. Inclosure may still take some time owing to safeguards but the number of commons which will be adequately and quickly dealt with under schemes will relieve the present feeling that it takes an enormous time to do anything with any common.

554. In the case of inclosure do you think it is still necessary to insist on

access to Parliament? At present a Provisional Order is needed, as you know. Do you think there is any purpose in having that long, complicated and expensive hearing before the Parliamentary Committee?—*Mr. Williams*: I think that it is the Provisional Order procedure where you have a hearing before both committees. The special procedure, as the Ministry of Agriculture pointed out in their evidence, is a rather simpler method.

555. But inclosure still needs a Provisional Order, does it not?—If you get a proposal to take a very small part of a common, perhaps for a small reservoir, very often the application is made by somebody who has come to terms with the commoners and the lord of the manor for permission to inclose that small part, and that application is made and considered under Section 194 of the Law of Property Act and the Minister simply allows it. He makes a simple order and I think that is the end of it. Of course, it is not satisfactory obviously to use this procedure for cases of large areas because technically the common rights are never extinguished. In order to extinguish common rights you have to go through the statutory procedure.

556. Section 194 really deals with enclosure with an 'e'.—That is true, Sir.—*Lieut.-Colonel Buxton*: As long as Parliament is brought in before so drastic a thing as inclosure is done I think we are satisfied. We do not want to hamper any legal procedure these days with unnecessary formulae as long as, by some means or other, the matter goes before Parliament.

557. It would be simply laid before Parliament with the right to annul by prayer, to use the technical language?—*Mr. Williams*: I think, Sir, the various grades of statutory instruments were set out in Appendix A of the Ministry of Agriculture's written evidence and they grade up from a very simple one to one where Parliament has to express its will. I suppose you could possibly use different sorts of procedure for the different types of cases—the more simple ones may be done by the more simple order and the big ones under the rather heavier procedure.

558. The real question is whether, where you have an inclosure award and there is still objection, you need to have

enquiry by Parliamentary Committee?—If you are thinking of Inclosure under the 1876 Act which still imports that Provisional Order procedure, we would agree that is extremely cumbersome and expensive. I think we are in favour of something easier than that.—*Lieut.-Colonel Buxton*: I would say that is so, but we have got to remember certain very special Acts—the New Forest Act and such like Acts—and to abolish full Parliamentary procedure there would, I think, be rather serious. People have been led to rely on those Acts. It is a matter of degree.

559. I think you said later on in the memorandum that private Acts should be capable of amendment or repeal by a scheme. Those Acts not merely apply to the big cases like the New Forest, do they? Are there not many commons where there are private Acts in operation, particularly where they have been obtained by local authorities, or of course for inclosure before 1845?—I think there would be trouble if Acts were amended by a scheme without the latter lying on the table of the House. That is the difficulty in consolidation. There are certain things, especially in the case of metropolitan commons which are denied because those Acts were, so to speak, passed before powers were granted to local authorities for recreation and so on.

560. The Metropolitan Commons Acts are public Acts. I was thinking of the private Act; for instance, Cambridge City has an Act to regulate its commons and I think they are very well regulated under it, but if it were necessary to amend the present scheme of management in Cambridge, then would you agree it should be possible to amend those Acts without going to Parliament, except, of course, laying an amending scheme on the table?—Yes, as long as it is laid on the table.—*Mr. Williams*: I imagine that it would be possible for the statutory instrument which introduced the new scheme at the same time to annul the private Act which embodied the original scheme.

561. Yes, it is done in the case of development schemes under town and country planning.—*Lieut.-Colonel Buxton*: If it annuls the original Act there obviously must be some Par-

liamentary safeguard such as laying it on the table.

562. In any case there would be a provision in the new Commons Act authorising the procedure. The point I am really getting at is that you do not think it necessary that in every case there should be express Parliamentary sanction by means of a Provisional Order or even by affirmatory resolution of a statutory instrument; it should be adequate that the statutory instrument is laid upon the table and can be seen and annulled by prayer of the House of Commons?—A statutory instrument of that kind involves some risk, but in order to quicken things up, as long as it is a statutory instrument I think it is all right.

563. I ask the question and rather press it because it is in fact what makes the whole process so expensive, having to employ Parliamentary agents and counsel before a Parliamentary Committee.—We know from experience what happens to things lying on the table if there is other important business about. It is difficult to ensure that there is a necessary and effective watchdog in Parliament.—*Mr. Williams*: The affirmative resolution procedure is safe; the negative requires a watchdog outside Parliament.

564. The Society, presumably, would be the watchdog?—It is a very small watchdog.

565. *Sir George Pepler*: I was rather puzzled when Colonel Buxton said it was a question of degree. The criterion here will not be the size of the common or something like that. It must relate to some procedure. You could not define a 'degree' which decided which should go before Parliament and which should not, could you?—*Lieut.-Colonel Buxton*: We have tried to define in our evidence the difference between what can be safely administered under a scheme—thus avoiding any unnecessary laying of instruments and public notices—and what requires public consideration before it should happen. That is a definition where I think it does depend on degree. Our feeling is that nothing ought to be allowed to happen to a common contrary to the past practice without adequate notice and safeguards, but if the whole thing is tied up into a good sound

system, statutory notice alone is probably a sufficient safeguard. But if other parts are weak, then stronger safeguards are needed.

566. *Chairman*: May we come now to paragraph 21 and my question on it. Some of the evidence received by the Commission suggests that, where conservators have been appointed under local Acts, they often have difficulty in making ends meet. The letting of games pitches, for instance—which you give as one means of raising money—would be practical only in the neighbourhood of large towns.—Yes, that type of letting would be. Conservators are often short of money which we feel has been a fault inherited from the old system of inclosure. They were given the least valuable part of the common in the old days and told to look after it. Looking further afield, the greatest likelihood of revenue for the common would be by agistment or letting off of grazing. That would be valuable. It is certainly true that many conservators are hard pressed. A very typical case is the Forestry Commission in the New Forest who have no special powers under Parliament, or did not have until the last Act, of spending money outside the inclosures. The amount that can be done for a common will have to depend on the opportunities of revenue. We cannot have great improvements to the common if there are not the sources of revenue to keep it up.

567. *Professor Stamp*: Could I ask what you have in mind when talking about the improvement of commons and particularly the sentence: 'Provision of means for the upkeep of the open parts is a pressing need'? What is involved in the upkeep of open parts?—The use of the grazing should be encouraged if the commoners are not using it sufficiently.

568. In other words, if grazing rights are not exercised, the vegetation has to be cut, and so on?—Yes.

569. That is one of the problems of metropolitan commons, is it not?—Yes; and there is the problem of whether, failing grazing as the better alternative, parts should be enclosed—temporarily enclosed from animals—to pay for the improvement of the soil, and so on.

570. You would agree then that some form of agricultural use is a vital point

of what you here call upkeep?—Yes, in most cases.

571. *Sir George Pepler*: If they were laid out for games there would be a revenue, would there not? That would help.—There must be provision for that. That is why we bring it in. An individual club or an individual person would be given the right to a pitch as opposed to anybody playing games anywhere. That in itself would be taking away land from the rest of the public, the commoners and so on, but in our opinion that is justified so long as the revenue therefrom is ploughed back as part of the general maintenance of the common and not looked upon, say, as a special right for the lord of the manor whereby he is able to let off half the common to the games club.

572. *Professor Stamp*: Would you regard a revenue from the management of woodland and the exploitation of timber as a legitimate use for these ends?—Within reason, but it is a very poor one for keeping commons going in the next thirty or forty years.

573. I am thinking of a very large number of our commons which are natural oak woodland or something of the sort, but where, as we have seen already, there is no right of the lord of the manor either to maintain or to replenish that woodland. It is a potential source both of use and revenue from your point of view, is it not?—Yes, under control.

574. So you would not object to fencing off for that purpose?—No.

575. I wonder if it would be legitimate to jump the next fence and say, would you have objection to, for example, a body like the Forestry Commission handling part of the management of the common and contributing revenue towards the upkeep of the open parts?—Provided there are the safeguards that we have laid down in our written evidence, but the use must be a secondary one. I think we draw a very strong distinction in paragraph 38 and the appendix between what we consider is the main and the secondary use. We say in Appendix C:

'... this cannot be considered as covering all cases of large commons where, after allowing for a full enjoyment of common pasturage, for the needs of townsmen as well as the local

residents to have space to wander, and for the need to preserve the depleted remnants of our wild life, there are still left over substantial areas of land on which the growing of timber would be expedient in the general pattern of land user, and the Society would not oppose a reasonable amendment of the law so as to permit in such cases that parts of the common could be temporarily fenced for such purposes. The Society feels, however, that there must also be machinery for the safeguarding of such traditional functions of commons as providing for public access, amenity, and wild life preservation. Such aspects have been recognised by past legislation, which although it has not, with regard to many commons, created or imposed any public right, has at least ensured that use of the land by the owner should not conflict with these functions.

576. May we restrict our remarks at the moment to lowland commons. The natural vegetation in this country is woodland and therefore in so far as any of our common land is open it is artificial and has only been created by man and maintained in that condition by the use of grazing animals; so I am most anxious to get the idea across that naturally some of our most interesting and valuable common land will be woodland now and in the future. Therefore there has to be woodland management as much as grazing.—May I point out, there were grazing animals in this country before man, and the balance between grazing and forest is not purely artificial and man made.

577. I cannot accept that.—That is nature. I think you are dealing in your question with the smaller type of common. We should not debar the Forestry Commission coming in to help with the kind of tree planting we suggested as appropriate to a common. We would not debar them from coming in as an interested party to help the lord of the manor or the management in the woodland part of their scheme. It is obviously wrong that a lord of the manor can cut the timber on a wooded common and have no means of replacing what he cuts. We accept that but what we do not think is suitable on commons is the heavy blanket planting which is of necessity the economic type of forestry which one must think of as the primary function

of the Forestry Commission. That, we think, is inconsistent with the best use of commons.

578. *Mr. Floyd*: Would you agree, supposing there was a very small blanket—let us call it a counterpane—in one corner, which provided regular money from thinnings and provided stakes for fencing the common, that on balance the commoners might not be better off? If you would not allow any commercial forestry even on a small part of the common how would you propose to find the money for keeping some of the Surrey heaths free from brambles and gorse so that it is possible to get on to them?—I am satisfied that if such a suggestion is brought into a scheme and the scheme put up as we have suggested the growth of necessary timber could be a very proper part of the scheme. We would accept that it would be done with regard to amenities and so on. That would be thrashed out at the time; a small blanket in a corner could be attractive. Such blankets are there already and want proper looking after on many Surrey heaths. I think the problem of the Surrey heaths is very definitely that they are of very doubtful grazing value. They are of enormous value for public access and naturally have a heavy proportion of tree growth nowadays. Some of that is very pleasant and to be encouraged. Certainly, putting access first on those commons—as I think we must, because that is their main use at present—the balance between tree growth and space to wander is a reasonable problem. Under a scheme it could be capable of a solution in which the trees would play a big part. But when it comes to the expenditure of revenue on that common, in practice one would find that for the benefit of the public, which in that case I would treat as the main national benefit, there would have to be as much felling and clearing of open spaces and grubbing of trees where they were not wanted as encouragement of them where they were. Both are fair aspects of maintaining a Surrey common.

579. *Professor Stamp*: Mr. Floyd was very modest. He talked about a tiny corner. Taking the lowlands throughout the country on a general basis what would you say to a fifty-fifty division? What would you say to 50 per cent. properly managed and the revenue from that used to maintain for public access the other 50 per cent.?

If we could cut down the area occupied by towns I think a fifty-fifty basis would be quite fair, but with our enormous extent of urban development on what is now bare agricultural land, the wild, open part of the commons becomes more precious. I will not be bound to fifty-fifty as a fair proportion.

580. *Chairman*: What Professor Stamp is implying is that we had some evidence from the Forestry Commission yesterday in which they suggested there were probably 800,000 acres of common land which were plantable. Of that they thought it would be reasonable to use 400,000 acres for purposes of forestry which would have to be—to use your phrase—temporarily fenced while the young trees were growing.—I was not present. Our answer must be that only 4 per cent. of this country's land is common land. It is a very precious reservoir and we should very much doubt whether fifty-fifty is fair.

581. It is not fifty-fifty of all commons—only the 800,000 acres. All commons are probably about 1,600,000 acres.—On that figure we should have to accept the unplantable country at the top in our share. That is a bargain which we cannot quite subscribe to on the fifty-fifty basis.

582. You would think that four hundred thousand acres was too much?—Yes, I think, too much.

583. *Professor Stamp*: Are you not still making the assumption that the desire of the public is for the barren, open waste rather than the delightful wooded glades and the intimacies of the natural oak woodland of this country?—Yes, I am.

584. *Mr. Floyd*: Might I ask whether you considered the public desire for open space—we are talking about Surrey for the moment—is so great that it would justify raising taxes or in some form providing public funds for cutting the bracken and gorse bushes all over Surrey? No one is going to do that unless the public who enjoy wandering there pay for it. There is no money to be had out of the commoners who have ceased to exercise their rights in Surrey. Have you not got to come to public funds if you want to keep these commons artificially open?—I do not think we ever asked the commoners to cut gorse merely for the sake of the public. It

must be fair do's—those who benefit by the improvement to the commons must pay. Obviously from the public point of view the paying—except for car parking fees, or something like that—has got to come out of rates and taxes. Our feeling is that it is worth while to get your town population out into the open air. We believe there is greater importance in getting it into the country than, for instance, playing 22 strong on a football pitch. In other words, the physical and mental recreation of the nation is so important that it cannot merely be met by organised games. Something bigger than that is the answer, and is worth paying for.

585. *Chairman*: I think you state the general principle at the beginning of paragraph 32. 'In financing schemes, the principle, in so far as money is to be found by those participating in the scheme, should be that those who benefit by the scheme should pay towards the upkeep of the common, in general in proportion to the enhancement of their interests by the scheme.' It presumably applies to the general public as well?—Yes. The general public's contribution has to come mainly through rates and taxes.

586. *Mr. Arnold-Baker*: Have you considered the application of the Land Fund to this problem? Nobody seems to know what it is for.—Whatever it is for now, its original purpose was for just this sort of thing. It was to make good our long neglect of these particular interests, which is going to cost the nation money to correct. Having asked the Land Fund to do that we would then presumably ask future interested parties who enjoy the commons and future rate-payers to maintain them afterwards.

587. *Chairman*: Paragraph 24 I take to mean that where on the application of either the land-owner or a commoner the Minister considers that a scheme should be made, he should have power to make one.—Yes. We list in Appendix A a number of other interested parties who could also apply for a scheme. We have also taken away the power-of veto in that paragraph—or suggested doing so—because we think the opportunity of objection is an adequate safeguard and the veto can be used in a frivolous manner. Even in the Act where the veto was given it specifically said that rights were not taken away.

588. *Professor Stamp*: I have two questions arising out of paragraph 24. The first is, could you tell me actually how the total value of rights on a common are ascertained?—*Mr. Williams*: I think it is rather a difficult question to answer. I do not know how the Minister of Agriculture deals with that sort of problem. I suppose one takes the total number of rights existing and the amount of land over which they can be exercised and tries to balance the one against the other and put a figure to the value of each particular right. I know the question has been asked of us and I have always had great difficulty in answering it.

589. That rather obviates my second question—whether you regard that as a satisfactory basis.—No, I think the whole idea underlying the veto is wrong. The proper place to object would be when the scheme was introduced.

590. I think we had a very interesting example in Cambridge which I quote from memory. The rights of the lord of the manor were estimated—I think I am right in saying—for the whole area as £100 and that is all he got. The commoners were bought out of their rights and we then realised that the Ministry of Agriculture had secured agricultural land at about one-third of its local value. That was a very interesting example of the assessment of value rights.—The power of veto has been abused in the past not as against inclosure to exclude the public but where there has been a perfectly good scheme thrashed out which the real common users, and the lord of the manor very often, have approved. Then in the hopes of getting a better offer somebody has stood out on a veto. It is an anomaly in a system of land tenure and land management to have that sort of veto.

591. *Mr. Arnold-Baker*: The trouble is that the veto really arises from the fact, does it not, that a common right is a piece of property, and if you do not have a veto you are in fact permitting the abolition of a piece of property? Assuming you are right in abolishing the veto, how do you propose to deal with the property rights?—If the owner is going to lose his right to property there must be compensation. There must not be confiscation. That is what the whole system of inquiry, and so on, is there to enforce—to see that there is fairness all round. If you do not get

fairness—patent fairness—on a common nothing will work—but we feel that having got patent fairness the veto is unnecessary.

592. I am concerned with what you are going to do with the piece of property. Where does the money come from with which the right is to be bought out? Who buys the right?—*Mr. Baker*: Is it not the case that that question only applies to inclosure? Where it is a regulation scheme the object is not to buy out and destroy common rights but to preserve them and to make them more useful. A regulation scheme under the Commons Act, 1899, for example, which leaves the common rights—that is the property—entirely untouched is nevertheless subject to the veto.

593. But in fact a regulation does presumably reduce the value of the property to the individual owner. I am not suggesting that that is undesirable, but the point is that you are reducing the value of his property.—*Lieut.-Colonel Buxton*: We hope not. We hope we are providing means by which his interest is being preserved and helped. There is the possibility that on an over-grazed common where there has been no restriction under existing conditions you might say that a regulation scheme was reducing a man's right. If in the meantime there is to be partial enclosure, which is contemplated in our scheme, I can see that there may be some adjustment between one interest and another. If they cannot be fairly adjusted as a working compromise, there might have to be, even under a scheme, some claim for exchange of value and some form of compensation. I do not think we could rule it out; there is a possible chance of one interest being worse off than another; but the normal thing where commoners work together on a common is that all benefit by an improvement. The difficulty always is that half of them stand by, let the other half do the improvements and then walk in and benefit by them. That is why the others will not go on with the improvement. Under a scheme I can see no justification why the veto should be allowed on the basis that a man will be losing something. His claim should be fairly adjusted by the organisation promoting the scheme and not by the veto.

594. I am not suggesting that you should preserve the veto. I am simply trying to discover how you would adjust the consequences of abolition to the property rights involved. But am I right in saying that you think that in most cases the question would not arise because the value of the rights would normally be increased, though there might be residual cases where perhaps that would not happen?—I do not think we can guarantee that somebody will not say that they object to a scheme, and that it has ruined them, and so on; but in fact I think there should be little danger of that. We are not quite as free in our enjoyment of our individual right to object as we used to be. After all, it is unfair to turn a man out of his farm but if he does not farm properly we do so. There is a strong difference between a man alleging an injustice and actually suffering one, but no scheme will work unless means of compensating him for a real injustice are found.

595. *Chairman*: I think we are getting a little confused between the regulation scheme under the 1876 Act and the regulation scheme under the 1899 Act which we are dealing with here. There is no veto by a third to stay proceedings under an 1876 regulation scheme which is put up by the commoners and the lord of the manor. But if a scheme is put forward by the district council under the 1899 Act there is a veto. That is not the kind of scheme you had in mind just now where it is made by a local committee, a committee relating to the common. At the same time you want to retain the power, do you not, in the 1899 Act, for the district council scheme? You were suggesting a different type of scheme, I think, by a committee of commoners under the jurisdiction of the Ministry of Agriculture. An 1899 scheme is one which is promoted by the district council for regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling and improvement of the common, and making regulations for the prevention of nuisance and the preservation of order on the common. I suppose usually its power is used in fact simply for regulating nuisance?—Yes. I would rather have a legal opinion on this, but we would not wish to rule out absolutely anything in the nature of a regulation scheme by local authority. Otherwise it might do away with some-

thing a scheme could not always pick up.

596. The difficulty, as I see it, might be, might it not, that you might have two sets of regulations, one made by your suggested committee and the other made by the district council?—That we feel must not be. That is one of the confusions of the past, by which some of the management principles for a common come under one Act and some under another, and that leads to confusion.—*Mr. Williams*: We had in mind that if a common seemed to need a scheme for regulating public access then a proposal for such a scheme could be treated in just the same way as our other, more agricultural, scheme. We do not anticipate the continuance of the 1899 procedure. We thought that could come in under our new idea, and the question of a veto would not arise.

597. *Mr. Floyd*: Generally speaking would you say that it was under-grazing rather than over-grazing that caused the commons in this country to deteriorate? Is it caused by treading in the winter and that sort of thing, or, generally speaking, has there not been enough grazing?—*Lieut.-Colonel Buxton*: Looking at lowland commons, certainly under-grazing. But on area the acreage of the big over-grazed hill pastures might perhaps well preponderate. I think the sheep walks of England have been seriously over-grazed.—*Mr. Williams*: I think the Friends of the Lake District are going to give evidence of that.

598. *Professor Alun Roberts*: I think it obviously varies territorially. I would say that in the lowland, especially parts of the Midlands, on heavy clay very impenetrable scrub is coming up because of the failure to exercise grazing rights where attestation is coming into being. The bigger graziers are temporarily disusing their rights because they cannot proceed with attestation as long as the whole population of that area is not attested or up to the grade. On the extreme upland common with ponies, sheep and the traditional stock, the inducement of subsidies and what not have led to very severe over-grazing and also an attempt to keep sheep at high levels—sheep that would usually go away for wintering in the first season—to avoid heavy wintering charges. The two problems are equally severe—the one over-grazing and the other under-grazing.

Your schemes are intended, are they not, to prevent either of these situations?—*Lieut.-Colonel Buxton*: To prevent either, yes.

599. *Chairman*: On paragraph 27 could you give us a more detailed explanation of the effects of the 1876 Act? We have, of course, had some figures from the Ministry of Agriculture.—

Mr. Williams: Perhaps I might attempt to answer that. I think the point is that the 1876 Act was dealing first with the regulation and improvement of commons or—and it is an alternative—their inclosure. Regulation under the Act covers the general administration of a common including the appointment of conservators and the adjustment of rights. We do not of course object to that but we do object to inclosure under the Act, as it simply means parcelling out the common in severalty amongst the people legally interested, and when inclosed the land ceases to be a common. What the public get under that procedure is generally some allotments for recreation or perhaps access to viewpoints. We think that that is unsatisfactory in present conditions and we have cited the Allendale case as one under which there has been an attempt to follow the inclosure procedure which has led to something of an impasse.—

Mr. Baker: Of course theoretically under that Act a pure regulation scheme can be made, and there need not be inclosure but in practice I think there has always been part inclosure and regulation of what was left over, which has not been found satisfactory.

600. You mean that the regulation scheme, or what the Ministry of Agriculture in their evidence have called a regulation scheme, very often does provide for inclosure of part?—All the regulations which have been carried out under that Act included a certain amount of inclosure though the Act itself says that either regulation of the whole or inclosure of the whole or inclosure of part or regulation of part are equally possible. In fact there has always been inclosure and the difficulty of having to determine the common rights before anything results. It takes years to carry through.

601. I see there have been only three inclosure schemes since 1900, two of them in 1901. That does not mean that in many of the cases that are quoted as regulation cases there was not some measure

of inclosure as well? In the figures given to us for addition to the very small number of inclosure schemes there are quite a substantial number of regulation schemes. Regulation schemes would in fact include some inclosure?—Yes.—

Lieut.-Colonel Buxton: Of recent years there have not been any.—*Mr. Baker*: There has not been a single case all the time I have been with the Society, not even of regulation. The last one was in 1919 and I came to the Society in 1927. Since then there have been none at all.

602. *Professor Stamp*: Could I take the first sentence of paragraph 27, in which you state:

'The Society does not favour a nation-wide, uniform system to be imposed for the better use of commons.'

Are you referring there to the actual system of management or to comprehensive legislation?—*Lieut.-Colonel Buxton*: The actual system of management, of having some central body which lays down how the commons should be run.

603. But your Society would not object to new legislation which would look at the commons of the country as a whole?—No, we ask for it. It is time there was a new statute.

604. I wanted to distinguish between the two. It is the actual question of management you have in mind, is it not?—We want to warn against the idea that a special commission sitting somewhere centrally could run the whole lot.

605. Then you go on to say: 'Each common requires its own treatment...' I take it we can interpret that liberally and that you would have some groups of commons treated as a whole?—Wherever there is possibility of inter-commonage let us have them all in one.

606. I still feel that the Society does think very much in terms of the maintenance of status quo with regard to each common, and that where you have open land your idea is to keep it open land, where you have got a wooded area you would keep it as such. When you are thinking in terms of the treatment of a common, its best use and so on, you are particularly having in mind the present position.—Generally it is better to improve and preserve the traditional aspect of anything than to invent some new remedy. Improvement of the old

is usually better than radical change in these things.

607. I think that is the whole point. I repeat what I said just now. Most of our commons are what they are as a result of a set of purely artificial man-made conditions. Just now you suggested that Londoners like their open land and not wooded glades. If I followed that logically I could say that you proposed to cut down all the trees in London because Londoners do not like them. However, to follow this logically one would probably say if an ecological survey were undertaken many of our commons at the present time are probably wrongly used, and if you like to go back one hundred years they were quite different in character, but you would take the present position as something primarily to be preserved?—No, not the present position. There has been the period between the two wars when they have been neglected. They were certainly better thirty years ago than they are now. I think you are trying to pin us down to something very pedantic in our view which I do not think we hold.

608. I hope I am not trying to pin you down. I am trying to get the viewpoint, perhaps it is the scientific viewpoint, that if we surveyed the commons of this country we should, say, have one which at present is entirely open gorse and bracken, but from the point of view of its soil aspects, and so on, would probably most naturally be partly covered with Scots pine and partly open. That would be its more natural and its more easily maintained vegetation, whereas we might find another area which at present was thicket which if properly grazed would become once more an attractive open common. It does mean one has to look at individual management with a great deal of flexibility in mind.—Yes, and we hope a great deal of flexibility for each common, because it is the variety of the common, and its multiple uses, which make a common such a significant thing in our national set-up. The variety in the common itself is as important as the variety from common to common.

609. *Professor Alun Roberts:* May I refer to the point of the final form that the vegetation will naturally take when conditions reach the climax. If you accept that form as the optimal for a

common it means that it will need very little maintenance to keep it at that stage in nature. If however you attempt to get a multiplicity of forms for a variety of interests you must expect to have to maintain the commons artificially and you must face the economic charge. That is the fundamental point arising from your statement. In short the nearer we get to the ultimate static condition that is natural for that region, the less maintenance there will be. If we attempt to get a kaleidoscope of types of vegetation we must envisage continued charges to maintain it.—I think we accept that, but we hope that in the struggle one will use the most economic methods to forward one's particular aim. One of man's troubles is that he has only tried to farm nature for about a generation. He has farmed his artificial crops for perhaps ten thousand years, and begins to know something about them. It is necessary now for man's sake that he preserves artificially some of the more natural features in this small island. He has reached that stage, but he has to learn how to farm them. Meanwhile we will admit that you cannot farm them for nothing. The battle is a battle. You have to struggle to avoid the complication of the whole being swallowed up by one kind of vegetation.

610. *Chairman:* On the next two paragraphs, I am still a little troubled over the fact that the initial expenditure is going to be quite heavy if you have a register of title and not merely a register to claim.—Regarding the levy for access we have made it clear that we feel that each interest is quite a separate one; any levy should as far as possible follow each separate purpose for which the common is run. As regards the initial enquiry we have envisaged that that has to be a national charge. It is a national planning matter of being sure that the land is in the best production. We could not see any purpose in putting the expense of those enquiries back on to either the owner of the soil or the commoners.

611. There would have to be some expense, would there not, for the commoner, because the commoner would have to prove his case? He must have some sort of tribunal, as we discussed last time?—Yes.

612. That would investigate his rights. He would then have to put his case, and very likely he would have to employ

counsel for that purpose?—In a matter of dispute at the present day he would have to do that.

613. If you are giving him a clear legal right in a register, would you not have to make him prove his right fully, and not merely accept that there was a local tradition that he was entitled to pasture so many cattle upon the common? Would he not have to prove that he had the right if you are going to give him a legal title?—If he can prove he has in fact exercised that right without any objection from any other interested party for a long time, that would be sufficient. We contemplate that in many such enquiries, once there has been public notice and claims are made unless somebody challenges them nobody need be put to much protracted defence of proof. There will be cases where it is hard fought because there will be two classes of commoners, perhaps one type who will say that the right has always been confined to freeholders, and the others who will say that it is for all the parishioners. Such disputes will arise, and there will be expense, but we had rather hoped that with everybody beginning to get together to run the common better as an active approved scheme there would not be a great deal of dispute or difficulty of proof of rights and ownership.

614. You mean the claim should be regarded as a right unless it was contested by somebody else?—Yes, after reasonable public notice.

615. Public notice of the claims as well as public notice of the enquiry?—I think that we would also have the scheme published after public enquiry. Perhaps that would be one stage too late. To avoid litigation, it would perhaps be quicker in the long run if there were an intermediate stage of published particulars of claims.

616. Can you tell us anything about the experience of the New Forest in this respect?—Ever since I have been brought into New Forest matters I think there has been very little doubt as to who were commoners.

617. But in the case of the New Forest there was a register. It is rather old now, I think 1854. I wondered if your records gave you any information as to that, how it was done, and whether there was a great deal of protest about the register-

ing of rights, and so forth?—*Mr. Baker*: We have not got any record of that. Of course there are extremes in this matter. There are plenty of commons for which it is known locally who are the commoners. They probably have some sort of register, but no dispute. The common rights are exercised, we know who the commoners are, and if anybody else comes along and exercises common rights he is turned off. For commons of that kind there will not be any difficulties. Then at the other extreme there are some where it is extremely difficult to find who are the commoners at all, where the rights have not been exercised recently because of T.T. troubles or something of that kind. But I think generally speaking what we had thought was that if anybody could establish a *prima facie* case without going to the utmost rigour of the law, he should be put on the register of those claiming common rights. That should of course be advertised, and it should be possible for anyone to come and dispute it, but in many cases it would just go through like that. That is what we feel, but it is all new ground.

618. If on a common in Cambridge I say I have common rights and nobody else disputes it, I shall have a registered title to those rights?—*Lieut.-Colonel Buxton*: Yes, but I think you would probably have to produce some kind of *prima facie* evidence.

619. *Mr. Floyd*: I think I could answer your question about the New Forest register being brought up to date. The late Deputy Surveyor, Mr. Young, who was the predecessor of Mr. Wynne Jones that we had here yesterday, worked on it for five or six years, and when he officially retired from being Deputy Surveyor with the Forestry Commission, I think his term of office was extended for something like two years when he did nothing but investigate all the common claims. He finished his labours just about a year ago. The New Forest register is up-to-date, but I think it is about six years' work and two years' intensive work doing almost nothing else, and Mr. Young was a man who had been in the New Forest for a very long time.—In a similar forest, Epping Forest, where the register accounts for something other than grazing, it is officially revised every seven years when election time comes round, and great care

is taken. We are only there dealing with something between 400 and 600 names. I think most people have some kind of a system, but probably the register itself is not as important to them as the day by day knowledge who is allowed to turn out and who is not. The register could not be as up-to-date, but I think the foundations for it are not difficult.

620. *Chairman*: Then there would be expense under the scheme too, would there not? Take these commons which are covered with scrub, and the like. Do you think that the commoners then would be prepared to agree to provide the cost of clearing the common in the belief that ultimately they would make a profit from it? The assumption behind your scheme is that the commoners would be prepared, if they or the majority of them could, to provide the money to clear the common, and use it for grazing, or whatever it is useful for. —If it came to very heavy scrub clearance they might feel it was not in their means to do so, but any improvement of pasture, any temporary leys and so on, similar to the kind of work which was done in the war, which may be advisable, that I think would be well within their means as a co-operative enterprise. If it came to heavy scrub clearance they would probably ask for a grant, but that would not be different from the grants that are already given on freehold land. The whole position of being able to afford this enterprise does depend on grants, and we feel that the grant system is applicable here once there is a responsible body to pay the grant to, and one which can sanction the use of a grant and see that it is properly spent. What we are mainly asking for is just the same type of grant, whether it be agricultural on the one side, or recreational on the other, as is already given on freehold land, but which at present is seldom given on common land because one commoner is not going to make himself responsible for the work. I believe that a commoner could get on a common the same kind of grant he gets on his freehold farm if he went to the Government and proved that he had done the necessary work, but he is not going to do it when other people are going to benefit. The difficulty over the type of land we are talking about is not that it should absorb more grant than marginal land under freehold occupation, but that the

management must be capable of 'grant management' so to speak.

621. *Professor Stamp*: What, Colonel Buxton, would be the attitude of your Society to the commoners undertaking what might be the obvious thing, self-help, by putting up picnic places and supplying things to passers-by, thereby securing a revenue to do work of clearance, and the like? Do you feel that would be an objectionable development? —I think that would almost certainly come under the scheme as a building. I think in paragraph 40 we deal with that.

622. You know the American system of having picnic places where special facilities are provided for litter, where people are encouraged to have their meals, and a charge is usually made which would be a source of revenue to the commoners. Do you regard that as objectionable? —I do not think I should. I think such a thing, as a practical method of bringing revenue into the common under a scheme, would have to be justified.

623. Is it not much nicer to get the money from the public willingly like that than to take it from the poor overburdened taxpayers in a form of subsidy? —I absolutely agree, as long as they are not allowed to vandalise the purpose for which they are there. There are two objects in America, one is to keep people from over-crowding the better wild land, and the other is to make revenue, but the sad result is that it is so successful that the tea places proceed further and further into the wilderness, and even in America they are running short of wilderness.

624. *Chairman*: I have a question on paragraph 30. The Society prefers that the responsibility should rest with the Ministry of Agriculture, even when the agricultural value of the common is small? —I think we raised our preference for the Ministry of Agriculture last time. The point is that we can see no hard and fast dividing line between one common and the other. There is a danger in talking about amenity commons and rural commons. There is gradation from the most urban to the most rural, and it would be dangerous to try and draw a line.

625. *Sir George Pepler*: Could the majority of commoners if they put up a scheme be subsequently overruled

by the Minister? Is your theory that a minority, if the Minister agrees, can overrule a majority? I understand the Minister may also produce a scheme when nobody else produces one.—I think in the case of a scheme we have left the minority of the commoners no other redress, except that we suggest on legal technical points they might have recourse to a court of law; otherwise they depend on finding somebody who will stand up for them in Parliament and argue that the scheme was a mistake.

626. *Chairman*: Do you refer to a minority of the commoners or of the committee?—Of the commoners, because the scheme is theirs. It is put up for approval. It is advertised, it lies on the table of the House, and then it becomes a scheme. If the minority—I agree it could be a majority if the Minister is strong in his opinion over-riding them as to what is the right scheme—do not make their case felt and agreed at the inquiry, the sole remedy we have left them is on the floor of the House.

627. *Professor Stamp*: On paragraph 32 I still find this difficulty, that if it is purely for benefiting agriculture or forestry the simplest answer is to eliminate commons, inclose them and manage them as inclosed land. The regulations which are proposed seem to me to be trying to benefit the public by giving them access, and in a minor way the agriculturist or forester. If you accept the idea that the people who get the greatest benefit from the scheme should pay towards the upkeep of the common, I contend that the people who really should pay are the public who are given improved facilities. Have you any suggestions for securing funds from the general public who will benefit the most?—Not any direct methods, though possibly your tea house is one. Only in a small way can one see any method whereby the public which comes from all over the place could pay directly towards a common, just as there is no way of compensating the public for what it loses when a common is inclosed. That is why we have to take such special care of the public; they cannot be compensated for what is taken away from them by an inclosure. Equally one cannot get a direct contribution out of them as individuals.

628. Unless there is a provision in the county rate.—Yes, in the county rate; the county rate must be reinforced

nationally too, because it is not only the county which uses the land. This particular problem of the public user of land is not solely applicable to commons. It happens wherever the public assemble. In these days they come from distant parts and this raises the problem of whether the cost of upkeep should come on the local rate. You can argue that the local petrol stations and everyone else score by the public coming there, but the public does come from a distance. The locality would often not have a problem but for those who come from a distance, and finance must therefore be regarded as a national charge as well as a local one. But that is not a purely commons question.

629. *Chairman*: On paragraph 33 I do in fact ask first of all, if there is a charge on the county rate, is the grant to be determined by the county council or by the Minister?—An agricultural grant would come mostly through the Ministry. Recreational grants cannot generally be produced except through the local authority machinery.

630. Regarding the grant from the county rate, does the Society contemplate that the county council would decide the amount of it, or would the Minister in framing a scheme say that a grant is to come from, say, the Lancashire County Council? Who is in fact going to decide the amount of the grant? Your scheme let us say has been made by the Minister of Agriculture. It apparently will not work unless there is first a considerable grant from somebody or other. The commoners cannot provide this, and there is no reason why they should, because it is in respect of public access. Your suggestion is that there should be a grant from the county rate. Does that mean that the county council is going to decide the grant, in which case the scheme may be dropped because the county council may only give a small grant?—I am quite sure of this, that no Minister can compel some particular urban authority, or any authority which is not a neighbouring one, to make a grant. He cannot pick on Birmingham and say it must contribute, because in the Lake District a large proportion of users, it is fair to say, come from Birmingham.

631. That is going on to the next part of my question. I was taking it in stages.

There are commons in Hertfordshire, and Hertfordshire County Council is always helpful in these things I am told, but the scheme for improving the common and making it more easily accessible, improving the amenity, if I may use that expression, is made by the committee and approved by the Minister of Agriculture. The essential point of the scheme is that money will have to be found for this purpose.—Yes, I think we took it as having to be voluntary. There are two sorts of grant we are thinking of. There is what I would call the normal grant for recreation, and such like. That would be available for public open spaces if they were not common. Application for such grants would be in the same way as for a grant for forms of public recreation on freehold land. If there was something over and above that towards running the common it would have to be voted I think under existing powers. There are existing powers for local authorities to contribute.

632. I have a note here:—

'The Ministry of Housing and Local Government reports that while a local authority can, of course, acquire and maintain grounds as parks, open spaces, recreation fields and the like, the only aid from Exchequer funds are grants payable under the Town and Country Planning Act, 1947, in respect of the acquisition or clearing and preliminary development of land for public open space. These grants are not applicable for the initial lay-out for example, turfing, planting of flower beds, laying of tennis courts, or towards the maintenance of public open spaces. The Ministry knows of no other grant available for these latter purposes.'

I would add that I believe the Minister of Education has power under the Physical Training and Recreation Act, 1937, to make grants towards the provision, but not the maintenance, of facilities for physical training and recreation, and that includes playing fields. These grants, however, reported by Housing and Local Government, apparently are only for public open spaces, and not available for commons as such, nor is there anything of that kind under existing legislation.—No, there would have to be modifications. Local authorities can contribute towards the ordinary maintenance of open spaces which are

not their own. One local authority contributes to another, or to the National Trust.

633. *Mrs. Paton*: I have recollection of a provision in a local government measure which included the possibility of a local authority raising a rate of up to 6d. in the £ for local amenities. Would it not be possible to use a fund like that?—I think the Chairman is asking whether we can tie this up with the present law, or how much the law would have to be amended. I think the Commission would have to recommend slight extensions. I believe them to be extensions of the wording rather than of principle. The principle is accepted, that certain forms of public recreation can be subsidised from the rates. The Treasury watches it very carefully, and I think the matter would want specially looking into. There are certain grants available of which we felt commons do not get their fair share at present because of the difficulty of payment. For achieving our purpose in full probably would need statutory changes. There is one rather obvious difficulty that one is up against, which is fencing for roads. That hardly seems anything to do with the right-holders, just to enable motor cars to drive fast across a common, and one does feel that that is a road authority's responsibility. I think what we recommend is bound to require some different form of assistance from that exactly covered by any Acts at present, but I think we recommend nothing that is not in principle accepted already for similar purposes on freehold land.

634. *Chairman*: It would be necessary, would it not, in the case of the Lake District, for example, for an Exchequer grant to be made?—Yes.

635. It would not be enough for a local authority to make a grant, because almost the whole population of England uses it?—I feel we have got to share the cost as a nation. We all share in the particular form of pleasure and one cannot pick and choose contributors, outside the county area, from those who are in fact the invaders. We all go somewhere.

636. All this makes the making of a scheme a rather complicated matter, does it not? You have first to decide how much you can possibly raise from the commoners and the lord of the manor. You then start negotiating with

county councils, county borough councils, the Treasury, or some Ministry or other before you know whether your scheme is going to work at all.—It certainly depends on a lot of goodwill to make it work, but nothing can be done for our impoverished marginal land without an effort. We do not feel the effort in this direction is going to be any more extravagant and expensive than many other uses of poor land are bound to be.

637. *Sir George Pepler*: Under the Town and Country Planning Act the Treasury have agreed to 50 per cent. grants towards public open spaces, or sometimes 75 per cent. If you were to start with something of that kind you would know what your limit was when you put up your scheme.—In those cases access is definitely to public open spaces.

638. *Chairman*: The difference is that the public open space is land of a local authority, whereas common land is private land on which members of the public are claiming a right of access.—This aspect of public use will call for some form of national control if it is in a ministerial scheme. What we cannot expect is grants either from the Treasury, or from rates, or from anywhere else unless there is some responsible organisation to accept responsibility to see that the money is spent as it is laid down it should be spent. That is another reason why we said there should be annual presentation of accounts to Parliament; the matter must be regulated.

639. *Professor Stamp*: I am wondering whether Colonel Buxton has looked at the implication of the first sentence of paragraph 33—'Commons at present cannot . . . take advantage of such grants as are made under the Hill Farming and Livestock Rearing Acts.' But if by creating a body of commoners money could be obtained under those provisions, is not that a prostitution of an Act which is intended purely to improve marginal land for food production? Have you not really in mind improvement of land for public access?—Certainly not, not in this particular. We are trying to get a better use of commons for the commoners, and in our evidence we have shown why in the past under existing Acts that is difficult to get.

640. I would be inclined to say if you carry this to its logical conclusion and a grant is obtained under the Hill Farming and Livestock Rearing Acts, for efficient use of the money you must inclose the land concerned and prohibit public access.—I hope the Commission will take very careful evidence on that particular point when they get up into the hill farming areas. There is no indication that the over-stocking of land has been any worse on the common lands than on the freehold land. We cannot accept as a positive assertion that in the hill country land is better farmed as freehold than as common land. We are not technical experts on farming who ought to go deeply into this question, but we would ask the Commission to satisfy itself very definitely on that point that, in fact, the common system of pasturage in the hill country is a wrong system agriculturally, as has been suggested.

641. *Mr. Evans*: Would you agree that in raising money the emphasis should be on the national aspect rather than on the local?—I think that is a fair point. So much of the better use of commons breaks down, if it is thrown back on local resources. It really is a national responsibility, but I would not like it to be thought that commons are a poor man's show that cannot help themselves at all. This better use of commons must encourage the local people who are using the common to throw their work and means into better use. Schemes will break down without a local intention to make the commons pay better.

642. I really meant there that money must be raised nationally from outside sources.—It is certainly a national responsibility.

(The proceedings were adjourned for a short time.)

643. *Professor Stamp*: On paragraph 34 I would very much like the Society to substantiate the statement that today no common is too remote to be visited. I have in mind in the west country land which is common land and to which there is no access, as far as one knows, by public highway, even by footpath, land on which, virtually because it is ill drained, I doubt whether a member of the public has put his foot for many, many years.

Are there not large areas of common which in fact are never visited?—We do not know of any. It is difficult to conceive of any common where there is no approach, except across the freehold land of the adjoining owners who are the commoners.

644. There are cases where there is a tract of common land which has been left because it is so ill drained as to be very largely marsh most of the year and is completely surrounded by private property. That is the sort I have in mind, with no drift ways to it whatever that are used by the public.—I still think it is not too remote to be visited. It seems to me to have been cut off in some other way.

645. You have made a very sweeping statement there.—Yes. We have said there are none too remote to be visited. I do not think in your case it is remote—none alone which has deprived the public of access. It may be that somebody has allowed public access to lapse.

646. The type of land which I have in mind is land which, because of its very low value agriculturally, has not really been used. It has been worth no one's while to inclose it and it remains as common. I have a feeling there is quite a lot of that, for example the so-called low moors on parts of Devon and Cornwall.—There is certainly a lot of semi-marsh country on which common rights are exercised.

647. Why I am asking you this question is that there is a possibility of the improvement of that land by a rather expensive process of draining. It is difficult to see how that could be undertaken while it is uninclosed common land, but it might be worth while under other conditions, and the loss of such land would be entirely negligible from the point of view of public access.—That loss would result from a scheme of inclosure, would it not? I doubt if in that case there would be much opposition to a scheme of inclosure if the land is so inaccessible.

—*Mr. Henderson*: Could I make one point about that? I am speaking from the pedestrian's point of view. There has been such an enormous change in the last thirty to forty years owing to better transport and organisations such as the Youth Hostels Association and change in habits, that we can see that in the future, in twenty years' time, some of these lands, if they were drained, might

become quite reasonable footpath routes. I think that point perhaps ought not to be overlooked.

648. The type of land I have in mind is usually very low-lying, and one cannot think of it as being attractive from any point of view as far as the general public is concerned. It is really the residue of an ill-drained basin.—*Lieut.-Colonel Buxton*: As long as there is the caveat that the proposal is carefully investigated, it is likely that on the one extreme some residual lands could be better put to other use.

649. *Chairman*: In paragraph 35 are you specifically asking that all commons should be laid open to the public as a matter of legal right?—We start off with the fact that the public always have had a *de facto* use, and therefore there should be a legal right at the outset. Only then will it be safe to tamper with the existing situation. Do it the other way, and as soon as the old system of legislation is abolished the biggest danger will be that that *de facto* use, because it is not a legal right, will disappear. Therefore we ought to start by turning *de facto* use into acknowledged right. You suggest the important word here is 'paramount'. We have not suggested that public use should be paramount. It is merely an important use, and the safeguard attaching to that primary use of the common, necessary when compared to other primary uses, is because there is no means of giving compensation for it if it is abolished. Therefore it is all the more important that all the safeguards are fully observed before it is taken away. We certainly would not claim however that under no circumstances may it be taken away—in fact we suggested it must be taken away partially under some of the betterment schemes. But that is why we ask for such taking away to be temporary, as far as possible, because once access is excluded there is no compensation that can be made for it.

650. At the beginning of paragraph 36 your reference to tree planting seems to be very much narrower than the memorandum which you have attached at Appendix C, Afforestation of Commons, where you allow the use of commons actually for forestry purposes provided that sufficient safeguards are maintained, particularly in the paragraph in Appendix C which I read this morning.—I think we feel that paragraph 36

gives the kind of safeguards which enable one to use part of the common under a scheme for tree growing. Paragraph 36 does not definitely deal with the actual tree planting. It deals with general fencing.

651. It refers to fencing, but in the first instance it says: 'Fencing is required on some commons for tree planting, in shelter belts or to enhance the beauty of the landscape', whereas you recognise in Appendix C the desirability of using some commons or some parts of commons for afforestation, that is commercial forestry, provided there are safeguards.—I think we envisaged those safeguards even in that rather general statement as being for the adaptation of the common for amenity and so on. Afforestation should be conditional.

652. On paragraph 39, does the Society approve of periodical ploughing and reseeded with grass? Would that not require permanent fencing and not mere temporary fencing?—On almost all ordinary farms now fencing for re-seeding is mostly of rather a temporary nature. You reseed a different area each season. You change your fences when you graze it. I think for that particular reason one would expect no particular harm to be done from the agricultural point of view by considering the fence as temporary. It would be a fence that was moved about under ordinary farming practice from period to period.

653. You do not mind fencing, do you, even permanent fencing provided that there are grids or gates, or something of the kind?—We feel any permanent fencing must be laid down in the scheme, and given an exactitude that prevents disputes afterwards as to whether it is in the scheme or not. We also want notices, and so forth, to say that the land is common land.

654. In paragraph 40 you suggest control of design.—I do not think it is under the law of the land but by administrative provision at the moment that most agricultural buildings are exempt. There is control in areas of special beauty and so on under Town and Country Planning legislation. We feel that if the buildings are to be allowed on a common where they have never been allowed hitherto, the arguments against agricultural buildings being

under planning control do not apply. Where they are a brand new departure we feel there ought to be control as with other buildings.—*Mr. Williams*: I think the reference to statutory means for enforcing control of design is (just for the record) the Town and Country Planning Landscape Areas Special Development Order 1950 No. 729.

655. *Dr. Hoskins*: By control of design would you include the control of building materials used?—I would here ask the lawyers' help. Under the Act at present I think they both come in. We cannot ask for anything greater than the normal practice in planning control, but material is a most important part.—

Mr. Baker: I would like to say we have had a good many applications from time to time for inclosure of small parts of commons for small buildings, and we have often repeated to the Ministry that we would have no objection to inclosure of such small portions provided the buildings were suitable in design for the surroundings. I do not know what their arrangements are, but the Ministry of Agriculture have seen to it, so it can be done. It is being done already in those instances.—*Mr. Williams*: I think they get an assurance from the local planning authority.

656. *Chairman*: They consult a panel of architects, do they not?—They can do that, but I believe in practice the planning authority say they consider it is all right. We have implied that there ought not to be a let out for these buildings from what are now considered the decencies of planning. There is perfectly fair exemption of agricultural buildings for design—often with rather sad results—but one sees the economic necessity of that.—*Mr. Henderson*: We surely hope the word 'design' implies materials.

657. You do not want Professor Stamp to be able to put up his 'Ye Olde Tea Shoppe'?—*Lieut.-Colonel Buxton*: I hope that will come, even more than agricultural building, within the scope of planning control.—*Mr. Henderson*: We are very grateful to you for that remark.

658. *Sir George Pepler*: May I come back to paragraph 37, mineral workings? You have to get planning permission to excavate minerals and in almost all cases there is a condition as to restoration—perhaps in every case. Do you want more

than that?—*Lieut.-Colonel Buxton*: I think even under the present Act it is just a little difficult for those gaining minerals on commons as compared with the gaining of them elsewhere. We look upon the extraction of minerals as largely a planning matter. We do feel that the proviso about restoring the surface and so on is a very valuable one because it cannot be evaded without planning consent. The gaining of minerals is a source from which, owing to the damage to the common, some contribution should be made towards the restoration of what is left. However good it may appear to be, 'restoration' often cannot fully restore the land to its previous condition either for use or amenity. Every profit made out of the common should pay its share towards the upkeep. This is rather a special instance; whereas with the greatest care damage is done and something of great value is extracted, probably on account of national necessity.

659. *Professor Stamp*: With regard to this question of extraction of minerals, I know that as far as agricultural land is concerned we regard restoration as being a matter of first importance, but I am not sure that that applies in the same way to common land. Some of the most attractive parts of our commons are old gravel workings which have not been restored, and they give an added beauty to the commons and render them almost natural nature reserves. I am thinking of the excavations on Headley Heath, for example. There the most attractive part of the common is where the gravel has previously been worked. Is that not the kind of case for individual consideration?—I think it is a case for the management to receive compensation rather than restoration in kind.

660. To use the money elsewhere?—To use the money on the common, and not to allow the gravel workers to get away scot free.

661. It is one of the things which strikes one, that very many of our nature reserves in this country are in fact old quarries, old stone works, old gravel pits, and so on, but they have their value. The conditions for restoration have not been imposed, and therefore we have the most beautiful nature reserves provided for nothing.—Nobody else can use them.

662. *Mr. Floyd*: Restoration could be, but is not necessarily, imposed.—Commons are peculiar in as much as under present law you have to consider the commoners' grazing interest as well as the interest of the lord of the manor in any restoration that is done. As *quid pro quo*, proceeds from mineral workings should go back into the common for the benefit of all interests.

663. *Chairman*: You have inserted a new paragraph 40 (A), the use of commons by the Defence Departments.—We have given much thought to use of commons by Defence Departments. A principal use of a great many commons at present is for training of troops and exercises.

664. Do they use the whole common, or merely part?—It varies very much. Sometimes they dig on the common and make trenches, and do quite a lot of damage, and some commons have been very much impaired. Training has got to be done somewhere, but where it is done in war time it usually continues. There should always be an amicable arrangement. Popular commons are not used for training at week-ends, and so on. The difficulty, of course, is the live shell, because then public access involves a risk. It is a risk which the public may willingly take, but which the Service Departments know will be laid at their door.

665. I was thinking rather in terms of the suggestion of restoration. I can understand that restoration would be fairly easy if it is merely part of a common which is taken, because then the area which was restored can simply be thrown back into the common, but would it not be difficult if a whole common had been taken over for some considerable time to re-establish common rights and generally to restore it to the condition in which it was previously?—Yes, I think after a long time it would be, but we have had cases in the past under the Defence Acts. They happened around Woolwich. Commons were taken and then sold at a magnificent price for building when the troops no longer required them. That seems altogether wrong. On the other hand, money had been spent on them, and the State, like anybody else, is entitled to recoup itself. We feel that very often the Services make comparatively temporary demands for a

given piece of land, and it is a great pity if when they abandon it the first consideration is not given as to whether it can be restored to its original purpose. We accept that that cannot always be the case, but at present I think the Treasury's point of view would be that as it is now freehold the best price must be obtained for it. That we feel is not right.

666. *Professor Stamp*: I wonder whether the Society has had experience of Service Departments taking common land and putting up temporary buildings which have then been allowed to go derelict and really are eyesores? —Such cases as I know have until quite recently been still under requisition. The first thing that happened after the war when the Services gave them up was that they were hawked round every Department before being derequisitioned. It was very tempting to think up a use for an old hut. I know one was used to dump post bags. As those huts are derequisitioned, to the best of my knowledge the condition on commons and on open spaces has been restored, but whether on some common where there has not been an active lord of the manor they still remain, I do not know.

667. I have in mind an area, perhaps 100 or 200 acres of what I believe to be common land adjoining the National Trust property in the Lizard. The National Trust are at Kynance Cove and in that area, and at the back the last time I saw it there was the most terrible devastation of deserted huts. I do not know how many cases there are of the same sort, or whether that particular case has come before your Society.—I do not think it has, but I know the map of this area more or less myself. I think you will find all the huts are on land still under requisition.

668. It may be common land under requisition?—It may be, yes.—*Mr. Williams*: There is the difficulty that when the land is finally given up a small sum is awarded to the land-owner for the expense of clearing it, which is quite inadequate to carry out the work.

669. *Sir George Pepler*: Is it not very often the difficulty of expense in getting rid of the concrete foundations, and so on, rather than the huts?—*Lieut.-Colonel Buxton*: Concrete is the worst, yes. It is now some years after the war, and I do not know many cases where

the concrete is very bad—an eyesore compared with the huts. With concrete it is almost impossible to restore, except through nature covering it up.—*Mr. Baker*: I know some cases in South Devon of common land which was used by the Services a good deal during the war and when they had gone I think they left not only concrete foundations but buildings of various sorts still standing. They are gradually decaying and falling down, or people are taking away bits of them. They are definitely an eyesore and take up a fair amount of room on the surface of the ground. As *Mr. Williams* said, the money for restoration and dealing with the damage is at a very low valuation, because the land is not valuable, being common, and it is quite impossible to carry out removal. There the mess remains, and will remain until time destroys it.

670. *Chairman*: Presumably there is no incentive to encourage restoration? —*Lieut.-Colonel Buxton*: No. There is one other factor which is that people occupied the huts. The local authority may get caught that way and be unable to turn them out.

671. On paragraph 42 we discussed this morning this question of overriding local Acts by means of schemes. There is the analogy that in the case of a planning scheme when it is approved by the Minister and takes effect it can override, repealing or amending, any local legislation which applies to that particular area. —*Mr. Williams*: Yes.

672. I presume that that is the analogy which you were taking, that a scheme provided by a committee and approved by the Minister should then, if it so provided, allow for the repeal or amendment of local legislation applying to that common.—We hope that it would do so.—*Lieut.-Colonel Buxton*: There is no other way by which powers can be obtained which are at present denied under the old Act. On the other hand no doubt there will be opposition to an old Act being repealed in a scheme, and replaced, but that would be done by proper public notice and so on. I think that is all right.

673. Does paragraph 44 mean that there should be a single Commons Act applying to commons of all types, that a scheme under that Act should override any arrangement under any local Act or general legislation, but that the present

arrangement should continue until such a scheme is made?—It is a slightly different thing, that paragraph on bye-laws, and so on, and there should be an attempt to consolidate them also. Under many existing schemes there is one notice board for one law and another notice board for another, and consolidation of bye-laws is as important as consolidation of the law. Dealing with consolidation it is our desire to get the law simplified in one statute, but one must consider certain Acts which might very probably thereby be abolished but which must be taken into account. We do not want to abolish the old legal processes for looking after a common until new ones can take their place. That needs watching in any consolidation Act.

674. I have a few questions on the Appendices. We come to Appendix A—the procedure relevant to making schemes, proposals to the Minister. The District Land Commissioner and the County Agricultural Executive Committee are in fact the Minister, are they not, from a constitutional point of view?—*Mr. Baker*: Yes. The Minister would cover them both.

675. So if you say, 'the Minister shall . . .', your suggestion is satisfied?—That would be so.—*Lieut.-Colonel Buxton*: That would be true of the County Agricultural Executive Committee and certainly true of the Land Commissioner. Those are given as examples. There is another body which has scientific areas, the Nature Conservancy, that was not meant to be excluded.

676. *Professor Stamp*: I do not think the District Land Commissioner exists.—*Mr. Williams*: I think there is a mistake in terminology. We really meant to say the Provincial Land Commissioner.—*Lieut.-Colonel Buxton*: We want to encourage him and the Conservancy to take an interest in advising and helping.

677. *Chairman*: In that Appendix, under 'consultations', would you mind telling me what A.O.N.B. is?—*Mr. Henderson*: It is an area of outstanding natural beauty.—*Lieut.-Colonel Buxton*: In that paragraph on consultations, I think we really ought to have put in the Nature Conservancy, for similar consultation for the scientific areas.

678. There is only one other point, which we have already covered, where you say—'power of the Minister . . .'

—We would still emphasise that in the long run, when the whole position is sorted out, Ministerial responsibility should remain to ensure that every common ultimately has a scheme.

679. *Professor Stamp*: Before we leave this the phrase 'Scheme, map and register', is one of the only references I think in your memorandum to the need for a map. You are there thinking in terms of a map of an individual common. Is that so?—Of such common land as comes in under a scheme, yes. It might be two or three commons.

680. Would you agree that no one, at the present time, knows where commons are or their extent, and that we have a very great need of commons being shown on one or other of the national maps?—It was our object that the map should be official. It is a very important part. The map should be legally authoritative once the boundaries of the commons are determined.

681. Until the National Parks Act of 1949 there was no map in this country which showed footpaths which were statutory rights of way, was there? Do you think something of that sort is needed with regard to the delineation of common land?—We do. It could not be done all at once. The Ordnance Survey could not do it, but we attach great importance to such maps.

682. *Mr. Floyd*: Do you think the map ought to be on a six-inch scale? Also, who should make it?—I would think myself two-and-a-half inch would be sufficient. It is a matter of the Ordnance Survey fashion of the moment: the six-inch scale is a bit too big and hulky. There is one point of which I have had practical experience. There is no scale which satisfactorily proves the width between the boundaries of a drove way or approach way, whatever scale is used. I think those things have to be laid down and specified at the time. The only object of a large scale map is to be satisfactory on detail, but I do not think there is a scale that is entirely satisfactory on detail when you come to argue ten feet against twelve feet, and that sort of matter. The need for a large scale can be obviated by a description on the map. It might fill in the details where the boundary might otherwise be doubtful. Subject to

that there is great merit in getting everything on the one copy and keeping it small. It might be very serviceable to put it up on a notice board. I do not think we hold any strong views as to the scale of the map, as long as it is sufficient to satisfy the lawyer in the court of law that that map, having been certified, solves the problem for boundaries in the future.

683. The two-and-a-half inch map does show the field boundaries in faint lines.—It is good enough. I should have thought there was nothing inaccurate about the two-and-a-half inch. The Ordnance Survey love it. They put all their heart into the two-and-a-half inch.

684. *Sir George Pepler*: With regard to Ditchling Common in Appendix B there is a reference to application under Section 193 of the Law of Property Act. You refer to difficulties. Was the application abandoned because of difficulties?—*Mr. Williams*: I think that the limitations have now been settled. There were several local meetings at which strong protests were made, but I think the Minister has now settled the limitations. *Lieut.-Colonel Buxton*: The great point is it has gone on being used during all the period since requisition.

685. *Professor Stamp*: In the paragraph on Dartford Heath, you say 'This is subject to a scheme under the Commons Act, 1899, and the Council wishes to control...'. Which Council is that?—*Mr. Williams*: It is the Dartford Borough Council.

686. The next example is the very interesting case of Hatherleigh Moor with which some of us have been very much concerned in the past. Could you tell us a little more about this sentence—'The commoners undertook to compile and keep a register of Potholders'? 'Potholders', I think, is their constitutional title. When was that undertaking given? Is it quite recent?—Yes. I think the arrangement was finally concluded in correspondence between the solicitors for the owners and the Ministry of Agriculture. I am afraid we have not got copies of that correspondence. These particulars were taken from a letter which gave the heads of proposals they intended to make to the Minister, but I have not got the actual letter or his reply.

687. You are satisfied from the point of view of your Commons Society that

this is the right solution to Hatherleigh Moor, are you?—*Mr. Baker*: We thought in that particular case it was the right solution. I was at the meeting held by the Ministry when the whole thing was discussed. The commoners arrived in rather a militant state of mind determined to get their common back. It was then discussed what kind of organisation they ought to have, and it was put forward and accepted by the meeting that there should be a managing committee on which would be represented the lord of the manor, the commoners and the County Agricultural Executive Committee to advise them on technical aspects. We have not had any news since. They are people that like to keep themselves to themselves. They have not confided in us. We have no reason to suppose the scheme has not worked well.

688. Suppose I said that Hatherleigh Moor with its 600 acres of magnificent, fertile, arable land, producing excellent crops, has because of the obstinacy of local holders of common rights gone back almost to its former neglected condition, would you agree? Would not any agriculturist say, 'Here is land which was doing something important from the national point of view, but owing to the opposition of a small number of commoners has had to be released'? I would call that a tragedy.—I would not call that a tragedy. Good grazing is a very important thing, though I am not sufficient of an expert to say it should predominate. If it is being properly managed by this Committee that is a useful agricultural purpose. I could not go further than that.

689. I hope, Mr. Chairman, this is one of the commons which the Commission will in due course visit and see for themselves, because I would not accept that reversion to open grazing land is anything like as good as the war-time use, nor as practicable.—*Lieut.-Colonel Buxton*: Our hope and object was that it would be kept up for better grazing use than it had been before all the improvements were made. The object of the Ministry of Agriculture and ourselves and the local enthusiasts was to secure that such improvement as had been made should at least be used for grazing to the best advantage. If it is kept as good grazing ground we should defend it. If it has really gone back worse than it was before the war we have a bad case. That

is all we would say, except that the arrangements had to be hotched up because, under the law as it exists at present, the Minister had to make use of such means as there were to revive the former way of running the common. It is rather a test case and I hope it is looked at.

690. *Chairman*: You would not admit that, in a case of this kind, if the facts are as Professor Stamp has said, the national interest might require the land to be kept as arable because that would take away the right of access?—*Mr. Baker*: We thought it right that the future use of the land in that particular case should be as arranged.—*Lieut.-Colonel Buxton*: With active commoners and active public interest and with access to the open space.

691. *Professor Stamp*: Some 25 or 50 acres of the higher part is most attractive from the point of view of amenity. It is an ideal spot with a magnificent view, but the land slopes away and 500 acres of it as it used to be was so ill-drained nobody could walk over it at times of the year. It was drained at great expense. I cannot conceive that those 500 acres, unenclosed, can ever be efficient grazing. You must have controlled grazing.—*Mr. Baker*: I hope the Commission will visit Hatherleigh Moor.

692. *Chairman*: I think we can very well carry on from that point to Appendix C, because I have the impression—I have taken out a few quotations—that this Appendix C is much more generous to other interests than your memorandum in general, that is to say, particularly in relation to afforestation, but it may also be true of other interests. Perhaps I can give you the quotation which I have marked as suggesting that the appendix is not quite consistent with the rest of your memorandum. On page 29:

‘To secure the proper balance between such various uses in the case of commons, there is required a general survey in order to determine in any particular area whether there is sufficient access to open country to suit the nation’s needs.’

It seems to me to recognise that there may be sufficient or more than sufficient open country with access in a particular area, and that therefore you would properly consider the national

interest as a whole requires some of that land to be enclosed and used for purposes of arable cultivation, or in this case, afforestation. But possibly I had better continue with the quotations, because there are several that seem to have the same result. On page 30 in the middle of the second paragraph:

‘Public access and afforestation must be judged *pari-inter-pares* and access must not be merely on sufferance to such portions of the land as are not required for forestry use.’

But, of course, *pari-inter-pares* means the other way too. The interests are regarded equal in either case. Then there is the quotation which I read this morning, on page 31, where, provided that there are sufficient precautions taken, the Society would not oppose a reasonable amendment of the law so as to permit in such cases that parts of the common could be temporarily fenced for certain purposes. In the memorandum itself you refer only to things like wind breaks and other uses, not formal cultivation of an area or afforestation. Then finally there is the last paragraph of Appendix C, ‘to balance the traditional uses of common land with other interests without real detriment to the former.’ Am I right in thinking that the general impression that one gets from this Appendix is slightly more favourable to other interests than to access?—*Lieut.-Colonel Buxton*: Slightly looser in conception. It deals purely with the problem which was very acute in 1953 of forestry and open grazing. I thought where it differed from our present memorandum is that it slurs over, as it were, the difference between what would be permissible under a scheme and what would require inclosure. We have not cleared up in that particular article how one would deal in the situation with rights. The article hardly touches on rights, I think. We have said *pari-inter-pares* with the public access, but there are also the other agricultural uses which have to be taken account of. That particular article is rather ignoring them, whereas in our evidence we have to bring them all into one conspectus.

693. The article rather suggested to me you were really thinking in equal terms of the various competing interests and treating them as rather on a level, that is, the interests of having a sufficient

production of timber and a sufficient production of foodstuffs, the rights of the commoners and lords of the manor, and the rights of the public in respect of access. It seems to me in the article you put them more or less on a level, whereas in the memorandum you use the phrase I used in one of my questions, that the predominant interest was access for the public.—They are predominantly, I think, access and grazing, the two together, because they are the two for which multiple use is most obviously going in our opinion to be co-related. We certainly stand by the rather vaguer terms of the article, but when we come to our specific evidence we ask if there was strong pressure that a common should be heavily planted and on a very large scale in the national interest, the value of access should be carefully borne in mind. If it were going to be a really heavy scheme of forestry we have said that should go through all the stages of inclosure and special approval, whereas we feel that to be suitable for inclusion in our proposed schemes something less drastic than blanketry would be needed. I think in the particular paragraph you have quoted where we mentioned shelter belts and so on, we were not going quite as far towards what you might call afforestation of a common. Where planting is subsidiary we felt that was something that could easily be put into a scheme without misconception, but we did feel that a rather heavy planting scheme on a common must justify itself through a full series of safeguards similar to what has to be gone through at the present day. It is in paragraph 36, under 'Fencing'. We got rather precise about shelter belts. In paragraph 38 we say 'Tree planting should make no serious interference either with common pasturage or public access'. It would have to be in a scheme and the plantation should remain part of the common. As long as planting satisfies those conditions it is suitable for a scheme. Beyond that stage, what you might call economic commercial planting must go through a procedure of safeguards and investigation similar to what it would have to go through at the present day.

694. The general impression then is that you want to keep all the commons open because you think there is not sufficient land for public access for air

and recreation, and so forth?—That is true.

695. And you actually say so. For example, in paragraph 5 you say:

'Any large or indiscriminate reduction in the area of commons, causing exclusion of the public, . . .'

I have got the impression from the way that the discussion has gone in the two days of your evidence that you would like every common, no matter how remote it is, to remain open to the public even if someone who is competent to judge thought it was in the national interest that a particular common should not be open to the public. Please correct me if I am wrong.—We would want to keep a common open, but if it must go there must be the same safeguards as at present before it is taken away.

696. But if its proper, best and most profitable use from the point of view of the State is for the production of food, particularly by arable cultivation, then it would have to be closed to the public.—It would have to be closed, but the same kind of proper precautions would have to be taken at the present day before it was closed.

697. You mean there should be a full investigation and so forth, but you would not object to the common being closed if it was shown on investigation that there was ample space available in the particular county? If the best use of the land was for agricultural purposes, having had it so decided you would then agree it is a case where the common should no longer be a common?—May we say that we could not object, rather than we should not object.—*Mr. Henderson*: I am beginning to feel great regret that we have put this Appendix in. I think it is intended to water it down a little, but personally I do not want it watered down very much. There is good reason to stick to one's first line of defence: you may be defeated and have to retreat.—*Mr. Williams*: I think an important point is that the article was drafted long before we had brought our minds to bear on such things as the new schemes we are advocating in the present memorandum of evidence.

698. *Professor Stamp*: While we are discussing this present matter there is that phrase in paragraph 38, 'Tree planting should make no serious interference

either with common pasturage or public access'. Now that is presuming that common pasturage will continue to be a requirement. Suppose there is no demand for common pasturage?—*Lieut.-Colonel Buxton*: If there is no demand for common pasturage and pasturage generally which is suitable for the multiple use of the land cannot be encouraged, obviously in the end there will have to be a straight compromise between public access and tree planting. On the great Surrey open spaces the agricultural element is almost out of it. We must accept that if there can be no pasturage, either one must plant trees to stop the scrub or rely on public access, but the public access is usually very strong where there is no agricultural use.

699. I suggest that that is a very real problem, not only within 50 miles of London, but also around many of our large towns; that keeping sheep on commons is quite impossible because of dogs. It is not simply that people do not keep dogs under control. Because of other modern difficulties cattle can no longer be kept on commons thus eliminating any importance the land might have from the point of view of grazing. I would quote as an example of that, Ashted Common just beyond

Epsom, where there was grazing, keeping the growth of scrub down. Now there is no grazing on that common, and some of it is still under requisition. Obviously some form of management has got to be thought out. Would you agree a compromise between public access and forestry might then be necessary?—Where there is no chance of grazing, public access needs to come first. There is no alternative to that.

700. *Mr. Floyd*: The profit from the forest might help to pay for the clearing of some of the land and its maintenance.—There may be ultimate profits from the forest—but the land has to be cleared and maintained forthwith.

701. *Professor Stamp*: It may be the Hyde Park method would be the cheapest way.—You mean artificial use of grazing animals as a means of keeping public space open. There is as yet no method of destruction of bush and scrub as efficient as grazing and it may well be that grazing even where otherwise unprofitable has got to be looked upon as the most suitable mowing machine for such areas as are essentially public open spaces.

Chairman: Thank you very much, Colonel Buxton.

(The witnesses withdrew.)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

4

Thursday, 19th April, 1956

WITNESS

Mr. Archer Baldwin, M.C., M.P.



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Thursday, 19th April, 1956

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SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

**Memorandum of Evidence submitted by
Mr. Archer Baldwin, M.P.**

Owing to the complexity and in many cases the absence of any documentary evidence relating to the rights of owners and commoners legislation will be necessary if the utilisation of common land is to be effective.

Such legislation should not be of too detailed a character. Owing to the varying state of fertility, situation, etc., it is advisable that only machinery with the minimum of detail should be set up so that each common should be treated on its merits. Legislation enacted should be limited in character but should be sufficient to enable local committees to be set up and put forward schemes for approval by the Minister of Agriculture. Such local committee should include representatives of county agricultural executive committees, rural district councils, commoners, and some representative of bodies dealing with public interests.

One of the first steps to be taken would be to decide on the ownership of the freehold which generally speaking is a lord of the manor and to decide what powers are attached to this ownership. The next step would be to decide those persons entitled to common rights and the extent of such rights.

Since it is seldom that the lord of the manor has any rights of much commercial value I suggest that they should be transferred by purchase or otherwise to the committee. No lord of the manor should have the power to over-ride the decision of a majority of a committee.

Having decided the persons entitled to common rights and the extent of their claim it would then be necessary to prepare a scheme for bringing the land into productive use and to decide the methods to be adopted to raise the necessary money.

Power should be given to the committee to pass by-laws dealing with fencing, rights of way, etc.

In some cases it might be decided that a certain portion of the common land is only suitable for afforestation. Since the commoners would not wish to expend money on afforestation it might be advisable to hand this work to the Forestry Commission.

No doubt the above and many other matters may not be agreed. It is therefore suggested that all matters not mutually agreed should be submitted to a small tribunal which should be local in character. A majority decision of the committee should be enforceable and when the committee have prepared a scheme it should be submitted to the Minister for approval. If this scheme is acceptable to the local A.E.C. only the formal approval of the Minister should be necessary.

In some cases where the commoners are few in number the best method might well be to allocate portions of the common to freeholders having common rights on condition that it was fenced and brought into cultivation.

There will be some cases no doubt where commoners would prefer to sell their common rights rather than make any contribution towards the funds necessary to maintain the common in full production. In such cases the rights of the commoners should be purchasable by the committee.

It is not suggested that the Treasury should provide any money to the committee other than that available to agriculturists under the Marginal Land Act, the Livestock Rearing Act and the Hill Farming Act. Loans could be raised on the security of the deeds of the common. In cases where there are no deeds it would be necessary for them to be brought into being.

The above suggestions are made with the primary object of bringing common land into production with a minimum of expense, a minimum of officials, and a maximum of power to a local committee to deal with the common by such methods as in their view with their local knowledge they may deem advisable.

Examination of Witness

MR. ARCHER BALDWIN, M.C., M.P.

Called and Examined.

702. *Chairman:* Mr. Baldwin, we are very grateful to you for having given us your memorandum. We have also had circulated a copy of your article from the Dairy Farmer of May, 1953, and have read your speech in the House of Commons of 14th May, 1954. We are very glad that you have been able to come along and help us today.—*Mr. Baldwin:* First, Sir, allow me to thank you and the Commission for giving me the opportunity of dealing with something which has been of great interest to me for many years. I think you have read enough of what I have said, and possibly you would like to start straight away by asking me questions.

703. May I ask the first question: the assumption on which your evidence is based is that many commons are capable of better use for purposes of agriculture and afforestation; would you like to enlarge on that?—I know of no common that is not capable of improvement, and some of very much improvement. Every common that I know, with the exception of a few of the deer forests in Scotland, is capable of being of some use.

704. Scotland fortunately is outside our terms.—Then I say that all the commons that I know in England and Wales are capable of being made very

much more use of than at the present time.

705. *Sir George Pepler:* Is that from the point of view of agriculture or from use generally?—From the point of view of agriculture, from the point of view of forestry, and certainly from the point of view of public access. At the present time I have seen commons which in my young days were capable of being rambled over by the public, which today are nothing but a mass of fern and briars. One common, particulars of which I shall give you in some detail, is not only covered with bracken and hrambles but is a menace. Every year some very big fires take place, which entail considerable expense through fire engines being called, and some day or other it might well be that some of the smaller dwellings and holdings on the common will be involved in a fire. These particular commons—may I just explain that they are in the list supplied to the Royal Commission by the county agricultural executive committee of the various commons in the county—are Bromyard Downs, Bringsty Common and Badley Wood Common. They are three that were under the same lord of the manor and are more or less joined. They are all three quite close to my home, and I have known them for some

time. Therefore in answering some of the questions that you ask me I shall deal with those particular commons because I know of them.

706. *Chairman*: My second question is how far you go in applying your recommendations to metropolitan and urban commons?—I would not propose to say more than a word about urban commons, because I know very little about them, but from what I do know it seems to me that urban commons generally speaking are more value to the public, for recreation and so forth, than they are for any other purpose.

707. But even they have to be grazed in order to keep them in good condition, have they not?—Some have got to be grazed, but there again it all depends on the common. Some commons you might be able to graze, but generally speaking I would have thought an urban common was so over-run with dogs and people that no one with any respect for his stock would want to graze it.

708. Thirdly I come to the question of access to the public; you are aware that all urban commons and many rural commons are open to the public as a matter of right—would some of your proposals not involve interfering with that right?—No. If I may I would like to answer your Questions 3 and 4 together, since they are rather hound up one with the other.

709. I had better read Question 4, then: there are many commons which are used for public recreation in fact, though the members of the public have no legal right of access; ought that de facto user to be recognised?—I appreciate that the public have latterly, since motor cars became available, acquired or have been enjoying access on commons to which they have no legal right, but I am not suggesting any curtailment in any way of what they have enjoyed up till now. I do not think the suggestions that I make later on need curtail their use at all. What I have suggested is that the management of a common should be entirely in the hands of a local committee, comprising representatives of the rural district council, the county agricultural executive committee, the commoners, and someone representing the rights of ramblers or the general public. For example I have had some correspondence with the Commons, Open

Spaces and Footpaths Preservation Society. They have written to me on several occasions before and after my adjournment debate in the House of Commons. What I propose is that the local committee should have full power to deal with any problems arising from any common in such a way that they can put a scheme up to the Minister for his approval. I suggest that a majority vote of the committee should decide, because at the present time some of the commoners who are trying to run their commons to a useful purpose find that, if they have one or two awkward people on the common who claim common rights, they can be frustrated. Those two or three awkward people can stop development. I suggest that that should not be permitted, but that a majority of this committee should be able to pass by-laws and make regulations. For this reason I have suggested that the first thing to do is to change the ownership of the freehold. I think the system of lord of the manor is completely out of date. An awkward lord of the manor can stop any development at all by just being awkward. I suggest that if he has rights which are of value, those rights should be paid for in compensation. There is nothing to prevent his having common rights as well, but he would then be only one of the commoners and not the lord of them. On the three commons that I have mentioned, the lord of the manor now is the urban district council of Bromyard. These commons were left by the owner of the estate within which they came to the National Trust, and the National Trust sold the lordship I think for £100 to the urban district council, and therefore the latter are in a very strong position now to help the commoners to proceed to develop the commons. I think that a system of lordship is rather out of date and something that should be altered. I am not suggesting any hardship to any lord of the manor, but only asking that he should not be in a position to frustrate those who want to develop the common.

710. May I raise two points out of what you have just said: first of all, public access to commons in fact started before the invention of the motor car, did it not? Was not the first reference in the Inclosure Act, 1845, and did not that phrase 'benefit of the neighbourhood' reappear in a stronger form in the Commons Act, 1876, so that it

looks as though the attitude of the general public towards commons is at least a hundred years old?—Yes, I am only suggesting that the advent of the motor car has extended the number of the public who really think they have rights. I know that local people always have had rights, but nowadays the particular common of which I am speaking is a playground for Birmingham every Thursday and every weekend.

711. In fact, in the phrase 'for the benefit of the neighbourhood', the 'neighbourhood' has been extended to London, so that London is in the 'neighbourhood' of Dartmoor?—Yes.

712. The second point is about ownership of commons. The lord of the manor or the land-owner in many cases, I am told, no longer owns the common, but has transferred his rights to somebody else without that other person necessarily becoming lord of the manor. But as owner he has got substantive rights in the common, has he not, apart from any common rights that he may have—he has for example the mineral rights, rights of timber, shooting rights and so forth, anything which does not interfere with the commoners' rights. Are you suggesting that he should be bought out and all those rights transferred to the rural district council?—Yes. The rights of timber, for instance, are very transitory, because the lord of the manor so far as I know never plants any trees on the common. When he has cut down that timber which is worth while his right of timber more or less has finished. Mineral rights exist on some commons, but they do not exist on others, and in many cases where there have been mineral rights they are not now worked at all. But those are matters of detail which should be settled by arbitration, if the lord of the manor does not agree them. The arbitrator should come in, the lord should put up all his claims for assessment and he paid such a sum as the arbitrator may decide his claims are worth. As you no doubt know, there are at the moment quite frequent sales of the lordship of the manor, and I believe one person is collecting them.

713. Who is going to find the money for buying them out?—I suggest in my memorandum that if the freehold were transferred from the lord of the manor to the committee, the latter would have some security in the way of title

deeds to offer to a bank or to a mortgagor, so that they could then have a fund to start to develop the common. It is essential and quite obvious that every committee for a common must have some money in hand before they can start work at all.

714. So it is really a form of mortgage, mortgage by deposit of deeds?—Yes.

715. *Sir George Pepler*: You referred to the three commons which the National Trust sold for £100—that would not go very far, would it?—No, that would not form a fund for the commoners. Later on I propose to hand in to you a letter. In connection with this particular common, I have been to a meeting of the commoners of Bromyard, which they asked me to attend, and I wrote last week for the latest position. I had this from the secretary:

'A scale of charges has been levied on the stock grazing the downs this year i.e. 2s. 6d. per sheep (no charge for lambs), 5s. 0d. per yearling cattle, 10s. 0d. per cow and 10s. 0d. per horse.

The levy realised £52 7s. 6d., and was made up as follows: 349 sheep, 13 yearling, 9 cattle and 2 horses.

From that amount £32 12s. 0d. was spent in applying 5 cwt. of basic slag per acre to the 31 acres of downs which were requisitioned during the war by the Hereford A.E.C.'

The county committee handed over the downs in a good condition. If these commoners have got power to deal with the commons by majority vote I do not think the acquisition of money is going to be very difficult. The secretary goes on:

'It was decided to improve a further 12 acres by ploughing, fertilizing and growing root crops, then to put down to grass; and permission was obtained from the rural council to erect a perimeter fence round this 12 acres for 18 months, from the 1st June, 1956 to the 30th November, 1957 inclusive.

An application was made to the Hereford A.E.C., for a grant under the Marginal Production Scheme, but they replied that a grant could not be given either to the council as owners of the soil, or to our committee, under the terms of the statutory instruments.'

At this stage I would just like to say that I think it is essential that if the com-

mittee are the freeholders of that land they should be put in exactly the same position as an owner-occupier who can get a grant under the hill farming and livestock rearing acts and marginal land production schemes, or whatever may be available to farmers. There is no reason why these people who want to improve land should not be put in exactly the same position as any ordinary farmer.

716. *Chairman*: Why were they refused a grant?—That I do not know, but they go on to say that their solicitor has written to the legal adviser of the Minister of Agriculture for clarification of the terms of rejection of the application, and they have not had a reply. They then say that at the first meeting they have had:

'It was resolved to revive the old manorial court, and the committee has now become the 'Bromyard Downs Manorial Court'.'

That manor included about 600 acres of common land.

717. Does the scheme show a profit?—As these people only started six months ago, they have not had an opportunity to show a profit, but I wanted to show you their enthusiasm. I pointed out to them, they are in this difficulty: although they have advertised for those who claim common rights, and 39 applied, the position might well be that there may be some who have common rights who have not applied. As I pointed out to them: 'If you plough up a piece of land and put it in kale, there may be a No. 40 to come along when you have got it nicely growing and pull up the fence and turn his stock in, and you cannot stop him.'

718. So ploughing has been allowed, in fact?—That is what is proposed on a further 12 acres. The 30 acres which are down in grass will not be touched, but a further 12 acres now become due for the plough. They have money in hand ready to start on that particular project. But the difficulty is that until they get some authority, although they may advertise, they have no legal right to stop any man who comes along and says: 'I am a commoner', and insists on bringing his beasts on the ploughed land.

719. And there is also the further difficulty, is there not, that people in the neighbourhood may claim a right of

access? Is it a rural common or an urban common?—It is a rural common.

720. They may walk across it and say that they are entitled to do that?—Yes. Of course, I think that is something which the committee should be entitled to have by-laws to meet. There should be defined footpaths. It is no good the public saying they have got access for walking across this particular land at the present time—they could not ride across it, let alone walk across it. Except for fifteen or twenty yards on each side of the road, and a few other spots, it is completely covered with briars and bracken.

721. *Mr. Evans*: On the financial side, might I ask, in view of the rights and amenities enjoyed by the public over so many commons, would it not be fair to expect a contribution from, say, the Treasury towards the cost of maintaining the common?—What I am suggesting with regard to the rights of the public is that if they have privileges they also have responsibilities. I feel that the people who look after their interests should have some means, in conjunction with the committee, of looking after that portion of the common which is left open to them, and of seeing that it is kept in a decent state and free from the terrible litter that exists at the present time. If they have got the right of going over it, they ought to have responsibilities as well. I do not want to suggest any claim on the Treasury other than what any tenant farmer may have, because I think there are too many claims on the Treasury at the present time.

722. *Mrs. Paton*: You said that any man might come along and say he was a commoner, and claim rights. Would he not have to show that he had rights?—That is one of the difficulties which I suggest has to be overcome at the very start. There should be an advertisement inserted in the local press, which makes it plain that after a certain date there can be no further application. Then the difficulty arises, how can they prove their common rights, because with the majority of commons the old court leet has never been held for years and years. It seems to me that it will be very difficult. I believe in the case of Bromyard, so far those who claim common rights have never claimed any more right than that the amount of stock which they themselves can winter can be turned out

in the summer, which seems to me a fair way of doing it, but I believe in some cases cottagers are making a claim to common rights. They invite their friends in distant country to bring in their stock. Those are things that have got to be controlled. I think therefore the elimination of the lord of the manor is the first thing, and then find out who are the commoners.

723. *Sir George Pepler*: With a time limit?—With a time limit; when that is settled, then the commoners can form their committee in conjunction with the other authorities, and take the necessary steps to deal with the common in a businesslike way.

724. *Mrs. Paton*: You want to eliminate the right of veto, of course?—Yes, because I have got cases, such as in a common above Kingston which is very excellent land, 300 acres of which have been reclaimed, where two awkward people on the common prevented a lot of work being done. The other members said: 'If these people are not going to pay their whack, then we are not prepared to do our part'. I want to stop that sort of thing happening.

725. *Mr. Lubbock*: You recommend legislation to enable local committees to be set up, and you have described to us your idea of the constitution of the local committees. Who do you suggest would convene, in the first instance, the local committee, if there was no natural inclination in the neighbourhood?—I suggest that the first preliminary would be, say, that the chairman and one or two members of the agricultural executive committee should meet the chairman of the rural district council and the chairman of the commoners' committee, to make the preliminary suggestion as to what size the committee should be.

726. So it is the agricultural executive committee really that you regard as the moving spirit there?—I think it should be the A.E.C. Since it will have to go through the A.E.C. to the Minister, I think the A.E.C. should be responsible.

727. *Sir George Pepler*: Is there always a committee of the commoners?

—No. So far as I know there are some, but generally speaking the commoners who are now setting up committees are setting them up for the first time, and doing so because of the difficulty which arises when the A.E.C. hand the requisitioned portions of the common back

to the commoners. A committee is necessary where the commoners want to see that the land does not revert. There have been cases such as one in Somerset, where the land was handed back to the commoners some time ago, and is now getting just as bad as it was before requisition. Therefore the commoners have taken the step of forming a committee to prevent that happening again.

728. *Chairman*: That applies to only about 20,000 acres which were requisitioned out of the 1½ million acres, does it not?—A very small amount—I suppose most commons have had bits requisitioned, and of course the A.E.C. naturally only requisitioned that which was easily cultivable and likely to give a result without too much expense. The Bromyard Downs that I spoke of is described in the geological survey as some of the best fruit land in Great Britain. It is on the Old Red Sandstone, and in the middle of good land. In fact in the middle of the commons there are many smallholdings which have been 'pinched', I suppose, in the old days by squatters. Those little oases in the middle of the desert show what those commons could be if they were properly farmed.

729. Are they used for fruit farming?—Many of them are cherry and damson paddocks, the favourite fruits in that part of the world. I would say some of those little holdings are worth as much as £200 an acre—over the hedge on the common the land is worth nothing. The commoners in the old days used to cut a certain amount of bracken, but they do not bother about it now. The common is simply the most ghastly wilderness—I am speaking of this particular one, but it applies to other ones that I know as well. May I finish this letter from the secretary? He says:

'The cost is estimated at approximately £120-£150, with some voluntary labour, and several people have undertaken to be guarantors which together with voluntary donations and the residue from the levy should meet our immediate requirements.'

What I want to impress upon the Commission is the enthusiasm and the willingness of these commoners to develop their commons if they get a reasonable chance. Here these people are, with nothing at all, providing money and getting guarantors from the commoners to spend

£150 on bringing more of the common into cultivation.

730. Is that enthusiasm exceptional or the rule?—That is the Bromyard Downs which I do not think exceptional. I give another common as an illustration, to show you how difficult it is to decide who the commoners are and who the lord of the manor is. It is the Old Wood Common in Worcestershire, just outside Tenbury. It is a common which we on the cultivation committee of the W.A.E.C. during the war had very great difficulty to get the W.A.E.C. to cultivate, because they were afraid of the commoners. But when they came to requisition the commoners said: 'Take a little bit more', and the result was that on that common we grew up to two tons of wheat to the acre, which shows the value of the land. The difficulty on this particular common is that there are two, if not three, people claiming to be the lord of the manor. One of the claimants to the lordship of the manor has sent me an extract from the Domesday-book. There is a complete hold-up on that common in getting anything settled, although they have formed their committee and have drawn up suggested rules for running a common. The Commission might be interested to see what is suggested. I will not read it all out, but it gives you the idea that these people themselves realise that a committee with power is what they want. They have laid down the subscription per head, and so on. I will hand the paper in if I may. I do not want to weary you with too much detail about that common, but there are the two commons, one in which it is settled who the lord of the manor is, and on the other I do not think they will ever agree without calling in an arbitrator. On the Bromyard Downs there are at the present moment something like two or three recreation grounds, football fields and cricket pitches, and Bromyard town itself I believe is going to develop its own local cricket club. There again is something that we want, to be able to give the committee the power to see that people do not come and destroy, otherwise a charabanc load of people may want to come down at weekends and occupy the pitch. It should not be allowed; nevertheless there is the benefit to the public, who have got rights of recreation.

731. *Sir Donald Scott*: May I ask if any buildings have been erected on

Bromyard Common?—No, that is one of the things which strike one as being so absolutely absurd. Bromyard rural district council wanted to build eight cottages, but they felt they had not got the right to build.

732. I did not mean that type of building, but a cricket pavilion or a football club house.—Yes, there is a small cricket pavilion.

733. *Chairman*: Was that put up with the permission of the Ministry of Agriculture?—I do not think so, I think it has been put up without any right, but no objection has been made. I was saying that when Bromyard wanted to build eight cottages, they did not build them on the Downs, but over the hedge on a good arable field. Yet on the other side on the Downs there was some land which was completely useless.

734. They would have had to go to Parliament to get authority to build houses?—Yes. There again I would like to see the power given to the right-holders. It is from a source such as that that I think they may pick up some money. They would thus have building rights which they might be prepared to sell, forming a pool for the further development of the land.

735. *Sir Donald Scott*: Is there not a danger that they may go on selling building rights, thus gradually decreasing the grazing and agricultural area?—If they want building, they decrease the agricultural area somewhere, and it seems to me if they decrease the agricultural area on common land it is much less important than decreasing it on some other land which is fully utilised for agriculture.

736. *Mr. Arnold-Baker*: But is not your case that the common lands can be for the most part well cultivated?—Some can, and some cannot. But there is no common I know of that is not capable of being put to better use. Some are just as good land as the surrounding country. As I say one common that we had to do with in the war grew up to two tons of wheat to the acre. Before then it was just doing nothing at all either for the commoners or for anybody else.

737. But nevertheless you would advocate a certain power of building on commons?—I would, yes; if it is a question of building, it seems to me that it

will cause less damage to agriculture to build on a common before it is brought into agricultural use, than taking land which is already in agricultural production.

738. *Mr. Evans*: And you would leave the power of decision on that with the committee?—I want to say at this stage that my object is to leave the power to deal with commons in the hands of local people who have practical knowledge. It should not be disturbed or upset from Whitehall. I am a great believer in local decisions and management, and I think if the decision of the committee is agreed to by the A.E.C., the Minister would have no difficulty in accepting any scheme which is put up to him. I do not want any town and country or any other planning people to come and stop the development of this, or for it to cost a lot of unnecessary money.

739. *Chairman*: But all this would be in a scheme prepared by the local committee and approved by the Minister?—Yes. I suggest that it certainly will be necessary to give some legal status to a committee. There should be an Act enabling the committee to deal with their particular common as they think right, because there are no two commons that I know of which are exactly the same.

740. *Professor Stamp*: Would you please extend two points there: first you have referred to the need for local knowledge and non-interference from Whitehall, then you specifically mentioned the county organisation, namely, the A.E.C. If you like to choose Hereford as an example, would you regard the county as the right level of local interest, or should it be a rural district or something smaller?—I have suggested that representatives of the county agricultural executive committee should be on a local committee. They should be people from the county committee who have knowledge of the particular area. They should be part of the committee, together with the rural district council, the commoners, and the Ramblers' Association or whatever it is; that should be the committee.

741. You have agreed that the commons have a great interest for the people of Birmingham, for air and exercise; how would their interests be represented?—By a representative of the organisation I have mentioned, the Commons,

Open Spaces and Footpaths Preservation Society, or some body similar to that. I quite satisfied Mr. Williams, their secretary, when I was putting a motion forward in the House.

742. So you envisage the management not of every single common as such, but for a group of commons in a county, is that it?—No, I would have a committee for each common. In the Bromyard Downs case there are three commons, but they are all more or less adjacent and all under the same lordship. In this case I suggest one committee. Also on those commons there is ample space which can be left for the public to enjoy, much more than they enjoy at the present time. It seems to me that all they want is 15 or 20 yards on each side of the road on which to throw their rubbish.

743. They are large commons, are they not, but if you think of our problem over the whole country, would you still want a separate management of every individual common, let us say of a few acres, rather like a village green?—No, I think when you come to a few acres something else wants doing. I know of one common of 18 acres—it is on the C.A.E.C. list—where they cannot decide who is the lord of the manor. It is interesting, because I think its condition is described in the list as 'rough'.

744. *Chairman*: This is Tarrington Common, is it?—That is the one. A friend of mine farms it. I was taking a stock-taking valuation a few days ago and I asked him what the position was. He said: 'We are in this position: Mr. Foley, who claims to be lord of the manor, cannot prove his right; if he can prove his right he will sell me the common, because there are no commoners who claim any rights on it, and it is quite useless'.

745. *Professor Stamp*: That leads me to my second point: if you select the county of Hereford as an example, would you regard a survey of existing commons as an essential prelude to your list, or are you just going to nick out certain ones which are known? You have agreed that there is a great difference in agricultural value.—I would say that there is already a survey to a certain extent of every common, certainly in Herefordshire, by the agricultural executive committee. They prepared their list—I must say their description is not very accurate, because where

they say 'Very little used' or 'Very rough', it does not always apply, but they have knowledge of every common.

746. If the county of Hereford has knowledge of every common, they are very exceptional.—Is that so? In this list which has been sent on by the county agricultural officer I have not found one missed. I think every common I know of is shown on it, and the total is something like 8,000 acres.

747. *Chairman*: It is 4,383 acres.—I thought it was 8,000 altogether in Herefordshire.

748. *Mr. Lubbock*: You said that there was to be no interference with the operations of the committee from the planners; did you mean that the planning Acts were not to apply?—No. I am perhaps prejudiced, but I think there are too many people in this world planning the lives of everybody else instead of doing a job themselves. I do not want to see anybody coming from London to tell people on the spot what they can or cannot do.

749. The local planning authority would have the normal power, you are not suggesting any special regime?—No.

750. *Mrs. Paton*: Would you suggest, Mr. Baldwin, that an annual report of what is happening with regard to the common should go to the Minister?—I think it would be interesting to the Minister. It could be done quite easily by the present cultivation officer of the A.E.C. He could furnish a report to the Minister. It might lead the Minister to encourage others to be as up to date as we are in my division.

751. *Mr. Evans*: Under your proposed committee, would there be a danger of the person representing the interest of the general public, that is, in public rights of access, being out-voted on almost every occasion?—I am suggesting that there must be an appeal tribunal, so that any dispute—there will be disputes—can be settled. Actually I want to keep the matter out of the courts. I want the decision to rest with the body similar to the Agricultural Land Tribunal which now settles a dispute between landlord and tenant as to dispossession. That tribunal comprises a farmer, a landowner, with a legal gentleman in the chair, and their decision is final. I want to see something like that set up, so that

people with plenty of money cannot force a case through the courts, up to the High Court and the House of Lords and swallow up the value of the common in legal disputes. I want to see this settled in the same way that I have had to settle disputes all my life as an arbitrator. My decision has been completely final, and there has been no appeal unless the parties can prove that I have misconducted myself.

752. *Chairman*: Since there might be a dispute over common rights, you suggest that there might be a local tribunal in each case. Who would appoint the tribunal and by whom would it be financed? Would it not be necessary to give a right of appeal to a court, and would not a great deal of expense be involved? Would it not involve the examination of manorial records, the taking of evidence from the oldest inhabitants, and so forth?—My suggestion is that you have already got machinery which settles disputes between landlord and tenant, in the way I have described, a tribunal of a landlord, farmer and legal chairman—that is the Agricultural Land Tribunal. They settle disputes. I see no reason why they should not settle any relating to a common. They are appointed for an area. It seems to me that instead of setting up a fresh tribunal, that one is already in existence, the members of which are selected because of their knowledge of agriculture as regards two of them, and legal knowledge as regards the other one.

753. Shall we take first the question of the establishment of rights? Take the case which you mentioned just now, in which three people claimed to be lord of the manor; somebody has to solve that question, and it is obviously a very difficult legal one which starts, perhaps, with the Domesday-book. Is not that going to involve an enormous amount of expense in the way of research and investigation, lawyers' fees and so on?—I do not think it will. If something is not done, the common reverts. Because two people claim rights the commoners cannot get on. One man who claims to be lord of the manor is now stopping the committee from fencing in a certain area, because the fence would have to cross the road which leads to his house. Therefore he can hold up the whole procedure. I have a feeling that if it is known that a decision will be made by the tribunal,

many of these disputes will evaporate. That tribunal will also have to settle the question of any disputes as to the rights of a man claiming common rights. If they cannot agree who are the commoners, then they must have somebody who will decide.

754. The rights once having been ascertained, would they be registered somewhere or what would happen?—I think they should be registered with the committee.

755. May we now come to the second point, which arises when you have a dispute within the committee itself, particularly a dispute relating to public access. You may have, for example, one member representing Birmingham, and Birmingham's rights are quite likely to be over-ridden, are they not, by the claims of the local people?—Yes. I would give the same rights to the tribunal to deal with an internal dispute, because quite obviously there might be a dispute between the commoners and the A.E.C. There again those disputes must be settled by someone. I think the same tribunal can settle them. Personally I do not think the public need have any fear; their privilege will be on the whole allowed without any great dispute. But I think there must be some tribunal to settle all these disputes, but what I am trying to avoid is any question of any dispute getting into the courts, which might mean that the man with the most money will frighten other people from legitimately contesting a claim.

756. *Mr. Arnold-Baker*: I take it you have considered the effect of the legal aid scheme in this connection?—Yes. There should be the right of legal aid, and just as the usual thing before an arbitrator is that the two appellants are legally represented, so before this tribunal I suggest that each side should be legally represented if they want to be. They will put their case, and the tribunal will decide upon the evidence.

757. But if they are legally aided before the tribunal, then surely a good deal of your case that your tribunal will be cheaper really rather evaporates, does it not?—I do not think so. There would be no right of further appeal. At the present time in the ordinary dispute between landlord and tenant, if the valuers concerned do not agree they appoint an arbitrator, before whom, if a case of law comes up, each of the

appellants is represented by a legal gentleman, and the arbitrator if asked to do so states a case for, I think, the county court to decide. There is no question of it going on, but he simply states a case if asked to do so, for either party.

758. *Chairman*: Of course, the questions involved in common rights would be very much more complicated as a matter of common law than the questions involved in landlord and tenant?—Yes, they would be.

759. *Dr. Hoskins*: Could I ask you whether you envisaged in registering common rights claims a time bar beyond which no claim would be admitted, and if so whether you would make that period a short one or a long one?—I certainly would have a time limit. I see no reason for having a long time limit, because surely if they have, say, two or three months, the commoners must know whether they want to make a claim or not. That should be sufficient.

760. Does that in your opinion take into account the possibility of a man claiming common rights but living at some great distance, not hearing in time of what was going forward?—I do not think it could be anticipated that a man living some distance away would have common rights. He must have got property somewhere adjacent to the common, I should think.

761. *Chairman*: Take the case of commons in gross, where the right of common has been transferred by deed to somebody who may not have any land in the neighbourhood at all—there are such cases, are there not?—I have not come across such a case, but there may be cases. It should be known to the rural district council who the lord of the manor is or who the freeholder is, and it should be made a condition that he should be advised of what was going to take place.

762. *Dr. Hoskins*: But in fact the establishment of a manorial title is a rather easier task than establishing common rights, and the trouble is most likely to arise, is it not, simply over the commoner and not over the lord of the manor?—Yes, but I do not envisage a commoner living a long way from the common.

763. *Mr. Arnold-Baker*: Supposing he is on military service, for instance?—

He is sure to have someone living in his house or carrying out his business for him on the common, who would surely advise him. I think most of them get the local paper when they are serving their period of military service.

764. *Chairman*: The commoner may be a babe in arms.—I cannot envisage that.

765. If he happens to have succeeded his father, and it is a right granted under a deed?—But he would have a trustee or someone looking after his interests.

766. *Professor Stamp*: Have you on your Herefordshire commons any system of stints—a right to pasture so many animals?—Yes, there is one common where the commoners are dealing with it very effectively, the Rushock Hill Common just above Kington. They are I think some of the most up to date people, but there they have an easier task than on most commons, because they live on a plateau which is not very readily accessible to the public. The commoners generally speaking comprise a comparatively few people, who have been depasturing on kale something like 2,000 sheep. They have done a tremendous job of work. It happens to be one of the commons over which I took the editor of the Dairy Farmer.

767. *Chairman*: The remarks on this common in the C.A.E.C. list are '225 acres'—which appears to be the whole common—'requisitioned by C.A.E.C., due for release December, 1956. Controlled by Commoners' Committee'. Will they be able to continue the cultivation which has been carried on?—Yes, I think they will. It is one of the commons where they have not got the awkward man who upsets everybody. I think they are working very well together and doing an extraordinarily good job of work.

768. Is the common fenced at the moment?—Yes, in that the surrounding farms fence it in. There are temporary fences put up round patches which are brought into kale, to avoid the cattle on the grass getting into the kale, but it is only a temporary sort of fence.

769. So the commoners will have to put to the Minister of Agriculture an application for permission to continue the fencing?—Yes.

770. And the Minister must be able to say that this fencing is for the benefit of

the neighbourhood?—Yes—they have got to leave, shall we say, certain wide passages across the common for the public to have access, but I do not think the public can claim that they have got the right to walk over every yard of a common.

771. It is rather difficult for the Minister to say that those fences are for the benefit of the neighbourhood.—If the commoners, and the A.E.C. who represent the Minister, are satisfied, I do not think the Minister himself would raise any objection. He has his representatives who will look after that sort of thing.

772. He could not rule that this is for the benefit of Birmingham could he?—In this case, Birmingham is not interested. There is another very big and difficult common just the other side of Kington, called Hergest Ridge. I think 300 acres of it were requisitioned by the C.A.E.C., and brought into cultivation. It is fertile land, up more or less on a flat plateau above Kington. There they grow turnips as big as cartwheels. I saw it being cultivated. I was standing on one side of a piece of ground and a man was ploughing on the other side, but I could not see the head of the man on the tractor for fern, it is such rich land that it grows fern up to any height you like. The difficulty with that common is that one half is in Herefordshire and the other half in Radnorshire. Radnorshire have done nothing on their portion; the Herefordshire portion today is good grass, and unless some steps are taken Radnorshire may turn out all their stock in the rough portion leaving them to do all their grazing on the Herefordshire portion. The result would be that the Herefordshire commoners would say: 'We are having nothing more to do with this', and that land will revert.

773. In that example which you quoted, the commoners have contributed willingly towards the cost of putting the common into condition, but are you not suggesting that there should be a scheme under which there would in fact be a compulsory cess, whether the commoners were ready to agree or not?—I suggest that with a compulsory scheme, if there is any commoner who does not want to put his hand in his pocket to contribute anything, he should be bought out. He should surrender his common rights on payment of whatever may be decided by agreement or, if no agreement is possible,

by an arbitrator. I think we have got to face this—although the body of commoners at the moment are agreeing and enthusiastic, it does not mean that they always will be. You will get two or three awkward people who put their heads together and say: 'We will have no more of this, and will be awkward'. Then the rest of the commoners will say: 'We too will not bother', and you will get a reversion back to the old state. That is what I want to avoid.

774. Our attention has been drawn to some commons in which under local acts there is already a body of conservators or wardens, or something of that kind, with such compulsory powers, where they are finding it exceedingly difficult to raise sufficient money to keep the common in good condition.—I think that has been stated, but I do not see any reason for it. Surely if the common is worth anything at all, all the commoners have to do to get money is to levy so much per head for sheep and for cattle, as the Bromyard people are doing, and that provides the fund to keep that common in cultivation.

775. But it may well be that the amount the commoner has to pay is more than the value of the rights to him.—It should not be. If the common is worth anything at all it has a rental value. At least the commoners should be able to subscribe the equivalent of the rent of the land, and that should be sufficient to keep it in order and bring some more into cultivation.

776. Yes, but the commoners would also have to make the necessary provision for access to the public, which might be costly. You would have to put up fences and keep the fences in repair, provide rights of way, and so forth. How is that money to be found? Are the commoners to find it?—I think undoubtedly. After all, as farmers we have to keep our land fenced. The public have rights of way through the middle of it, by footpaths or whatever it may be, and I can see no reason why commons should not be in exactly the same position as any farm where you have rights of way. There are rights of way now which should be left, and there is no reason why the fields should not be set out in such a way that the right of way is left as it at present exists. It is only turning the open spaces into fields so far as possible. There is one difficulty, I appreciate. If

you turn the common into too many fields the difficulty of water arises. Communally you will perhaps get water to all the stock, but if you divide the land into too many small pieces there is no water available for each particular field when it comes to grazing. That is one of the difficulties which may arise on many commons.

777. *Mr. Evans*: As I see it, a lot of these commons will be partly amenity and partly agricultural. The amenity side will cost quite a lot in many cases to keep up; should not the public pay something towards it?—I quite agree, the public should pay sufficient to keep a warden, or a part-time warden, in order to clean up the mess which is left after holiday tours, and also to see that, if a wide stretch of land is left for the public to use through the middle of the common, there is somebody responsible for keeping that bit of land free of bracken and so on. As I said before, if the public want rights on the common, they should have some responsibility at least for keeping it in decent condition so that it can be enjoyed. On Bromyard Downs, the old lord of the manor—whether he had any right to do so or not, I do not know—would not let any motor car come further than 15 yards off the road; in fact, he put several people into court and they were fined. There was a notice put up, but whether or not he had any right, I do not know.

778. That brings me back to my first question, of how this money is to be levied. I suggested the Treasury, or lack of something better. But how would you get the money out of the public?—If there is a warden he could charge everybody who pulled up there something for the privilege of parking.

779. *Mrs. Paton*: Do you know if for example the City of Birmingham makes any contribution to any of the commons which the citizens of Birmingham enjoy?—I am not aware of it.

780. That would be one source of finance if it could be obtained?—It would be a source that would be justifiable.

781. Surely there is no reason why, say, a city council, knowing that thousands of its citizens enjoy the advantages of an open space, should not be asked to make some sort of grant towards the upkeep?—I think that is a source that

might well be looked into. One reason why I do not want to do away with the rights of the public to have road verges is that if they have no right to pull up there they will pull up on some other place and perhaps damage crops of corn, or whatever it may be, by throwing bottles, tins, etc., over the hedge.

782. *Chairman*: I now come to my last question—though you have dealt with it partly. You suggest that it should be possible for this committee to raise money on the mortgage of the land. Suppose the committee failed to keep up the payments on the mortgage, what would happen then? Would the bank foreclose?—It would foreclose.

783. And then the common rights would be extinguished?—It would seem the right thing to do. If the commoners are not sufficiently keen to keep up their commons in a decent state, then the commons cannot be much good to them. If they will not keep them going and pay their interest there would have to be some question of foreclosure. I do not myself visualise that. When there is some sort of security in the way suggested the commoners will be able to go to the bank, take a temporary loan and repay it gradually. I do not think they will want a mortgage. There is another source from which they can get some revenue. I think most commons have quite small bits on the fringe adjacent to a farm or small holding which claims commons rights. It is quite likely that those commoners who claim common rights would be satisfied to have such portions which are not cultivable mechanically added as a freehold to their holdings on condition that they bring them into cultivation. Then the common rights are extinguished by inclosure.

784. *Mr. Evans*: And you would leave that decision to the management committee, Mr. Baldwin?—Yes.

785. I am not absolutely clear on the form of the proposed committee. In the first place I thought you were going to give them a blank cheque, but now I gather there would be appeal in some form to a tribunal, the Agricultural Land Tribunal for example, from the committee if it disagreed within itself. Is that so?—I think that is essential.

786. *Mr. Arnold-Baker*: To revert for a moment to security for the mortgage, are you not converting these lands which

before were, so to speak, public lands into private lands?—That is what in fact is being done. It is making the land into freehold owned by a committee rather than by an individual. The controversy over the old Inclosure Acts was because they transferred common land to the local land-owner.

787. But this may amount to inclosure by way of foreclosure on a mortgage?—It may. I am not afraid of foreclosure or inclosure.

788. In that case, what becomes of the public rights, shall we say of the people of Birmingham?—They would still be entitled to their public rights.

789. *Chairman*: Even after foreclosure?—I think they would have to be. In the legal document that is drawn up it should be made quite plain to whoever lends money that public rights still exist and will exist even if they foreclose. I am not envisaging the commoners wanting a very large sum of money, but only sufficient to get started. Then they will begin to accumulate money in a reserve fund.

790. *Professor Stamp*: What you have just been telling us seems to me rather at variance with your memorandum and particularly your article in the Dairy Farmer in which there is a heading which says: 'Give each commoner freehold of a portion of the land'. I take it you have been talking mainly about the management of commons, retaining them as commons, but you do in certain cases also advocate inclosure and the disappearance of the commons altogether?—Yes. One that I mentioned, Hergest Common, led me to make that suggestion. I have seen a number of the commoners and put this question to them: 'Instead of being a commoner and having rights over the common, would you prefer to have a small patch put on to your freehold, which would end your common rights?' They said: 'Yes.' I think there are some commons where that could be done.

791. They would be commons where there is little or no interest in public access?—Yes.

792. We were told by the Commons, Open Spaces and Footpaths Preservation Society that in these days every common in every part of the country had become accessible to the public and there was no such thing as a piece of land not of

interest from the point of view of public access. Would you agree with that?—I am only thinking of the rights that the public retain over a place like Hergest Ridge, which is a very big common, seven hundred acres. The only possibility of the public enjoying rights there was over a straight walk, probably about 10 yards wide. People walking over it had kept the fern and the grass down, but now it is an impenetrable jungle; so I do see difficulty in retaining for the public as much right as they had before.

793. *Dr. Hoskins*: But, in fact, if you improve your commons and clear a substantial area, what is to prevent the public using the area so cleared?—I think that must be the subject of a by-law. I cannot think that it is right that the public should prevent the proper utilisation of the land of this country. They took no steps to keep their rights in the past, nor made any attempt to clear the ground; they simply went on what was left. If you allow the public to wander all over the common I think the whole thing falls. If people bring their dogs and turn them loose all over the common, then they are going to destroy any value.

794. I am not suggesting that should be the case, but I wondered how, as a point of law—I am not a lawyer—if the public has this right to wander at large, you propose to prevent them using the right as the open space enlarges?—I suggest that powers given under an Act of Parliament, which I think has got to come before any good work can be done, should lay down conditions in regard to this; or else powers should be given to the local people themselves to lay down conditions and mark the rights of way that the public have got. If the public have the side of the road to a decent extent, plus wide alleyways right across the common, I cannot see that they want anything more, because they have never enjoyed anything more in the past. These commons are completely inaccessible to all except gypsies and rabbits.

795. *Chairman*: Is the answer in this particular case that the public have no right at all on the common—it is only, in fact, that they have been using the common in the past? It is not a case where there are legal rights?—I think that is the legal position. These uses have

grown up but there are no legal rights to the public to wander at large wherever they like, and I would not allow them to do so. I think that they have not made use of their rights in the past, and I do not see why the value of commons should be completely destroyed. It would mean that if the committee clear that common they do so for the benefit of the public yet the public have contributed nothing towards the cost.

796. *Mr. Arnold-Baker*: Supposing that the public in some way or other did contribute, shall we say by way of a grant from the City of Birmingham, or from the Exchequer, what would your attitude to the public be then?—I would see that they had sufficient land left for their full enjoyment. I think there are few commons where a portion is not left. On one I have in mind—Bringsty Common—there is a little mound with an oak tree on the top, with access to the main road. That is the sort of thing I would leave open so that people could pull up by car and look at the surrounding scenery. If there is difficulty with regard to the public there should be protection, and, as I say, arbitration by the tribunal if any dispute arises.

797. *Chairman*: There is one other point mentioned in your memorandum which you have not touched upon—that is the possibility of afforestation of a common.—There are portions of most commons that probably lend themselves to afforestation. I would suggest that in those cases the land for afforestation should be handed over to the Forestry Commission to deal with it. I cannot see that commoners will be prepared to put a lot of money down to plant trees, the value of which will not be realised in their lifetime. Therefore I suggest the Forestry Commission should take a hand in planting a shelter belt or an awkward piece of land with trees. Commons must be dealt with on their particular merits—some are suitable for afforestation; some do not lend themselves to it. That is a decision which there would be no difficulty in dealing with.

798. That would again mean fencing off, at least while the trees were young?—Yes.

799. There was one suggestion made to us by the Commons Preservation Society. It was that some of these commons that have become 'jungle' should be kept as

'jungle' in order to encourage the development of wild life.—I think that the financial position of this country, with the difficulty of meeting its balance of payments, is such that if people want to encourage wild life and that sort of thing they should not use good agricultural land. We should look upon our land as the Danes looked upon theirs when they were bankrupt, which we very nearly are now. They used the land to feed themselves, including land that was not so good; they used it to pull themselves up from bankruptcy. With regard to wild life, I have suggested to my friends on the subject of rabbits: 'Fence off your gardens and then put a few rabbits in them. See what you think of them then.' We can get plenty of wild life, and the only wild life I can think of in this jungle I am speaking of is rabbits. Any other wild life—pheasants or anything like that—have no earthly chance of existing very long. Therefore I do not attach much importance to that point. We still keep our foxes on cultivable land. I do not think we want to encourage any fresh form of wild life that we have not already got on our farms.

800. Is it not generally true that commons are the least productive part of the land and that they have not been put down to cultivation in the past because they were marginal land?—I do not accept that. I know of commons surrounded by farms on which good crops are raised, and I cannot think that the fence between the farm and the common makes a difference to the land. It simply means that when inclosure took place it got to a certain point and had to stop. I know of several commons in Worcestershire; the most recent case I can think of is land that was once a big common but is now inclosed and is fertile. I do not think that commons have been left for the reason you mention. I know the present productivity of some of the land of the commons, and I think there are very few without a squatter on them who at one time has taken a bit of land and still retains it. I think that is sufficient to prove what the common is possible of in the way of increased production.

801. *Dr. Hoskins*: Would you agree, that it is a matter of local history that the boundaries of English commons have varied from generation to generation, and that many commons which are now com-

mons today have once been under crops? The boundary has advanced and retreated according to the local circumstances of the village?—I would not have thought there had been any case of retreat. I doubt if once inclosure took place there was ever any question of reverting back to common land.

Dr. Hoskins: It has in fact happened in the past, simply because too much of the common was taken under plough and the balance of the husbandry of the parish upset. The village then had to decide to restore the common to a certain extent, but there is no question historically that certain common land has been under the plough in quite a considerable area.

802. *Chairman*: There is one other point you made in your speech in the House of Commons of 14th May, 1954, which is not in your memorandum. You suggest the possibility of loans to these committees of commoners in order that they might develop their land. Where were those loans to come from? Is this merely a mortgage?—Mortgage or the bank. If they have some security there will be no difficulty.

803. You do not mean from some central fund?—No, I do not want to see any fresh creation of anything of that sort. I think the local bank, and possibly some of the individual commoners who were worthwhile men would put their names as bondsmen at the bank for the overdraft. I know they are doing it on one common at the present time. They are prepared to advance money in order to get their scheme working. There would be no difficulty with regard to finance, especially if they can get the right to grants under the Marginal Production Scheme, the Drainage Act, the Hill Farming Act, and so on. With a grant from such a source I think there would be no difficulty at all.

804. *Dr. Hoskins*: I would like to ask one or two questions about the management committee—do you envisage the committee, or a majority of it, framing the rules?—Yes.

805. And the same committee by a majority altering the rules as the circumstances change?—Yes. They would have their meetings. At one particular common they have had two meetings already of those claiming common rights.

806. Of all the commoners, in that case?—Of the commoners who made any claim.

807. That is the point I want to get clear. Is it the committee by a majority that will make the rules, or will they call a meeting of all the commoners and take a majority vote?—No; I suggest the committee should be elected annually and when elected their majority decision should be accepted. If they do their job badly, then the whole body of commoners will attend the annual meeting and re-elect a fresh body to serve. I would not say that it should be possible to turn out the whole committee at one time—say, half a dozen re-elected every year, or something of that sort, so that you get some continuity.

808. *Mr. Evans*: I cannot see what will be left to the tribunal if they are going to work on a majority. Did you not say earlier cases of disagreement amongst the management committee would be referred to the tribunal?—Yes.

809. *Mrs. Paton*: The minority of the committee could appeal, I take it?—Yes; if the majority did something which the minority did not agree with, the minority could have it referred to a tribunal.

810. *Mr. Arnold-Baker*: Will the commoners have a majority on the com-

mittee?—I have not gone into the question of whether that should be. That would have to be settled by a meeting of the heads of the various organisations I have mentioned. I should imagine that the commoners themselves ought to have the biggest representation.

811. *Dr. Hoskins*: Is the position about appeals this—that in many cases one hopes the minority would accept the majority vote, but if they felt sufficiently strongly they could appeal to the tribunal, so that in fact not every majority vote would involve an appeal and ought not to involve an appeal?—I think it ought not to and very seldom will. In my experience commoners are fairly reasonable people, and unless something particularly obnoxious is suggested by the majority I cannot see many, if any, cases going to a tribunal to settle.

812. *Mr. Lubbock*: May I ask are you suggesting a simple majority or a larger proportion of the members to carry a case?—I think that is rather a matter of detail. You might perhaps put it at a two-thirds majority. That perhaps may be the safest thing to do; but it is a matter of detail that I suggest the A.E.C. should deal with.

813. *Chairman*: Does that conclude all your points, Mr. Baldwin?—Yes, Sir Ivor.

(The witness withdrew.)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

5

Thursday, 19th April, 1956

WITNESSES

Rural Reconstruction Association



LONDON
HER MAJESTY'S STATIONERY OFFICE
1956
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List of Witnesses

THURSDAY, 19th APRIL, 1956

MR. EDWARD HOLLOWAY

Chairman

MR. JORIAN E. F. JENKS

Secretary of the Council

MR. D. R. STUCKEY

Member of the Executive Committee

on behalf of the Rural Reconstruction Association

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 19th April, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Rural Reconstruction Association

The Executive Committee of the Rural Reconstruction Association have the honour to submit the following observations.

1. In 1955 the Research Committee of the Rural Reconstruction Association issued a report entitled 'Feeding the Fifty Million'. At pages 28-29 and 53-54 of that report, the Committee considered and made proposals for the better utilisation of common land, particularly for agricultural purposes.

The Association desires respectfully to draw attention to these recommendations, which, it is submitted, are sound in principle.

2. The object of any legislation and action in relation to common land, it is submitted, should be to ensure that any common land is put to the best use in the national interest.

In some cases, all that is required may be a better regulation of existing rights of common; in others, enclosure may be desirable. Some commons may best be used for afforestation. Others may provide sites for housing or industrial development, while in yet other cases the best use of common land may be for an open space and public recreation and enjoyment. The 'best use' in the national interest may comprehend many different types of development.

The Association accords high priority and importance to the more intensive use of common land, wherever possible, for agricultural purposes. It is the belief of the Association that a great many commons could be used more intensively for food production with advantage to the nation; but the Association makes full allowance for the fact that development of other types may be indicated in particular cases. Clearly all these possibilities must be considered before a decision is made.

3. The legal position of commons in general and many commons in particular is exceedingly complicated. It is often a matter of extreme difficulty to discover facts relating to the ownership of common land and the rights over it.

4. In view of the widely differing circumstances of commons, both as to the legal rights in relation to them and their potentialities for various purposes, the method of legislation, it is submitted, rather than making any general change in the law relating to commons, should be to establish responsibility and to provide powers and machinery for dealing with them severally.

5. Any procedure must be in accordance with the accepted principles of Parliamentary government. The procedure must be subject to Parliamentary review. The procedure must be practical and flexible. There must be provision for interested parties to make representations on and objections to any proposed scheme and, in the view of the Association, there should be opportunity for interested parties to take part in the formulation of any scheme. Particularly, there must be adequate provision for ascertaining the basic facts about any common in respect of which action is contemplated, as that is the first and most important step in the solution of any problem.

Bearing these principles in mind, the Association's Research Committee evolved the proposals set out in the report which, as further developed, may be elaborate and explained as follows.

6. (a) A Minister should be responsible to Parliament for securing, in accordance with the provisions of the Act, that all common land was put to the best use in the national interest. He would be responsible for the due and proper use of the machinery set up, both generally and in particular instances.

(b) The Chief Land Registrar should be empowered to require the registration of any land over which rights of common were claimed, and also of those rights themselves. The land and rights as proved and recorded would thereafter be transferable only in the Land Registry. The legal position would be made public by the publication by the Chief Land Registrar of a report, setting out the position.

These powers of the Chief Land Registrar would be applied by him to any common, either upon his own motion or at the request of the Minister.

The Land Registry is well equipped to investigate and record matters of this kind, and this procedure would enable the legal position of any common to be clarified.

It would be desirable that the Register should be open to inspection where common land and rights of common were concerned, so that the up-to-date position could always be ascertained.

This, however, would be contrary to the usual practice. It is not at present possible to inspect the Land Register except with the consent of the Registered Proprietor. The ownership of land cannot be ascertained by public inspection of the Register as can the ownership of shares. The reason may be that if it could, owners of registered land would be in a different position from owners of unregistered land.

This difficulty could be avoided by registering titles to common land and rights of common on a Provisional Register, differing from the full Register only in that it would be open to public inspection.

If thought fit, the titles could be transferred to the ordinary Register when a scheme for the regulation of the common had been approved.

(c) The County Agricultural Executive Committee should, subject to the directions of the Minister, make a survey of the agricultural possibilities of each common. The suitability of the land for afforestation is another important relevant fact, and the Forestry Commission should either be associated with the survey, or make an independent survey. This report, or these reports, should also be published, and, with the Chief Land Registrar's report, would provide the basic information necessary for deciding the future of the common.

(d) The Minister should be empowered to set up an *ad hoc* body in respect of any common to prepare, consider and submit to the Minister a scheme for the future development, use and regulation of the common. When the foregoing information had been obtained, such a body would be set up.

This may provisionally be called the Commons Committee.

The composition of the Commons Committee would depend on the interests disclosed in the Chief Land Registrar's report and the type and circumstances of the common. The Minister should have a good deal of discretion in determining the composition of the Committee.

It would be convenient for the chairman and/or secretary to be appointed by the Minister.

Persons serving on, or represented on, the Commons Committee might include, as circumstances dictated, the following:

The owner of the common.

The commoners.

The County Agricultural Executive Committee.

The planning authority.

Other local authorities.

The National Farmers' Union.

Voluntary associations, such as the Council for the Preservation of Rural England.

Some independent persons of standing.

The advice and assistance of the Minister would be available to the Commons Committee, who would endeavour to produce an agreed scheme for submission to the Minister. It is suggested that they should have a period of time, which could be extended if thought fit, in which to do so.

(e) If the *ad hoc* body, acting by a majority, were able to agree a scheme, that scheme would be submitted to the Minister for his approval.

There should be a provision for an inquiry, if necessary, and for the approval of the scheme with or without modifications.

(f) In the case where the *ad hoc* body were unable to agree upon a scheme, the Minister should be empowered to produce and proceed with his own scheme, subject to like inquiry.

(g) The scheme as approved should be brought into force by an Order of the Minister, subject to annulment by resolution of either House.

(h) The matters which might be prescribed by such a scheme should be framed comprehensively.

It might be necessary, according to circumstances, to provide for:

The compulsory acquisition of rights of common.

The extinguishment of rights of common.

The modification of such rights.

Compensation.

The enclosure of some or all of the land.

The closure of rights of way and the provision of new rights of way.

The vesting of the land in some authority, established or to be established.

The setting up of a permanent authority to manage and regulate the common.

The raising of funds for fencing, maintenance and like purposes.

The sale of some or all of the land and the disposal of the proceeds.

Modification of Acts of Parliament affecting the common.

Numerous minor matters.

(i) Where the common was very small the *ad hoc* body could be dispensed with and the Minister could be empowered either to put forward his own scheme, subject to inquiry, or request a local authority to submit a scheme.

(j) It would also appear necessary to make provision for modification of schemes in force.

7. The procedure proposed is not a judicial procedure. It is legislative in character and the object of it is to ensure the co-operation of those interested to the fullest extent in the solution of a practical problem.

Clearly the effective working of the procedure must depend on the good faith, integrity and political skill of those concerned and upon the vigilance of Parliament.

8. An attempt to deal with commons in this way will bring many difficulties to light. But it is respectfully submitted that the procedure proposed will not create

the difficulties. They are there already. Whatever provisions are made for commons, they will ultimately have to be applied to particular cases, when these difficulties will become apparent. In the submission of the Association it is best to recognise this straight away and to deal with the commons severally from the outset.

Examination of Witnesses

MR. EDWARD HOLLOWAY, MR. JORIAN E. F. JENKS AND MR. D. R. STUCKEY,
on behalf of the Rural Reconstruction Association

Called and examined.

814. *Chairman:* Mr. Holloway, would you like to introduce yourselves to the members of the Commission.—*Mr. Holloway:* May I say first of all that we greatly welcome this opportunity of attending the Commission and giving evidence on a matter of considerable interest.

Mr. Stuckey on my left and Mr. Jenks on my right are the two members of the Association who have really the job to do on this occasion. Our Research Committee, of which Mr. Stuckey was the Honorary Secretary, was responsible for the production of the publication 'Feeding the Fifty Million', a copy of which we have provided you with. Mr. Jenks prepared the original draft upon which this report was based. It is largely his work. In that book we made some recommendations on the questions of common land and, based on those recommendations, Mr. Stuckey prepared the memorandum for submission to your Commission.

We of course in this matter are in the main interested in the proper and best use of land in this country. Our Association aims at getting the maximum possible agricultural production, believing that that is in the best interest of the country—of course for various reasons connected with balance of payments problems and so on which do not really directly affect this Commission. We approached the question of common land with the idea that areas which are available should be used to the best advantage and it was from that view that Mr. Stuckey prepared the memorandum which you have before you.

I think if you have particular specific questions arising from the memorandum it would be in the main Mr. Stuckey who would be equipped to deal with them. He has given much study to this matter in preparation for this visit. Mr.

Jenks and I have been very adequately briefed with memoranda which he has provided, but he is, shall we say, the spokesman for the Association on this occasion.

815. May I say first of all that we are most grateful for this memorandum and for the copy of the book, and also for your consenting to come along this afternoon to answer any questions we may put to you. I think the five questions I formulated after reading your memorandum have been given to you. Possibly we might start by having those questions. The normal procedure is for any member of the Commission to ask supplementaries or ask other questions arising out of the questions I may put, so that you may have to face a barrage from both sides. I take it that you wish to emphasize the principle stated at the beginning of your second paragraph, that the object of any legislation and action in relation to common land should be to ensure that any common land is put to the best use in the national interest. Would you like to tell us to what extent the existing law enables that principle to be carried out?—*Mr. Stuckey:* Sir, we certainly do want to emphasize that principle. We consider it to be the only sound basis for any policy in relation to common land, that the land should so far as possible be put to the best use in the national interest. But of course that principle, like so many other political principles, is not one which is to be applied rigorously and regardless of consequences in all circumstances. It is not a rule of morality—it must not be elevated into that. It may conflict with the facts, it may conflict with other principles too, but as a practical basis for a policy in relation to commons we suggest that it is the best that can possibly be found—that so

far as possible all land should be put to the best use.

Equally, we recognise that the best use may comprise many different things. Our Association is in a particularly neutral position in this matter because, while we believe that a very large area of common land could be better used for agricultural purposes, we also recognise that much of it could be used for forestry, some of it could possibly be better employed for development, and some of it could equally well be left as it is for the public recreation and enjoyment. While we are anxious to see an increase in agricultural production, that may often be better served by using inferior common land for building on and thereby reducing the demands on better quality agricultural land which is not common land.

So far as the existing law is concerned—to what extent that enables the principle to be carried out—I should say that it operates singularly ill at the present time. One can say that, because there is vast scope for the improvement of common land for use in agriculture and forestry. It is well known that there is the greatest difficulty sometimes, in quite obvious cases, in diverting common land to any use other than that of common, for development and so on. The procedure is extraordinarily cumbersome and out of date; the initiative throughout, if there is any, comes from the bottom and there is no person responsible nationally for seeing that the land is put to the best use in the national interest, so far as I am aware.

I think I can say that it does seem to be the national policy that land should be put to the best use in the national interest. I have that on the answer given on the 25th October last year to Mr. Biggs-Davison—the Conservative Member of Parliament for Chigwell—when he asked the Prime Minister who were the Ministers responsible for keeping under review the actual and contemplated changes in land use with a view to seeing that the available land was put to the best use in the national interest. The Prime Minister's answer to that question was, the Minister of Housing and Local Government for England, and the Secretary of State for Scotland: so there are Ministers responsible for keeping the situation under review. But so far as England is concerned, if there

is anyone responsible he certainly has not any power at all adequate to enable the best use to be made of the land; so I would certainly say that at the present moment the existing law was by no means conducive to that end.

The procedure in many cases is very expensive, very complicated, and often the lord of the manor can completely stop any proposed action. That may have been justifiable in the days when the lord was perhaps the local squire, and played a much more important part in rural and local affairs than he does today, but nowadays the lord of the manor may have very little connection with the common. He may be some person in the City who has just bought it up. Manors are being sold by auction now and anyone can buy one. The lord may not be resident in this country but somewhere else entirely; and that he should have power in a perfectly proper case to stop any projected action does seem to me to be a most extraordinary state of affairs at the present time.

As a result of this there are all over the country vast areas of what you might call moribund common—that is what it amounts to—which could undoubtedly, much of it, be put to better use.

816. The Prime Minister's answer presumably was based upon the Minister of Town and Country Planning Act, 1943, which so far as England and Wales are concerned vests the responsibility for seeing to the use of land in the Minister of Housing and Local Government as he is now, whereas all the proceedings with which we are concerned I think in fact go to the Ministry of Agriculture?—Yes. I do not know what relations exist between the Minister of Housing and Local Government and the Minister of Agriculture: possibly there is some working arrangement between them in relation to commons, but I think it is rather doubtful.

817. How can the lord of the manor interfere with action under, for example, the Commons Act, 1876? Has the application to come from him?—No, but if he is not prepared to consent to the Provisional Order then that cannot go forward. That is the position, as I understand it—that where the land in respect of which the inclosure or regulation is to take place forms part of the waste of a manor or is owned by a lord in right of his manor, then if the lord does

not consent or if he expresses his dissent, the scheme cannot go forward at all.* I think the position is that under the Inclosure Acts whether it be for inclosure proper or regulation in its meaning of one of two things—adjustments of rights or the other types of regulation—in either of those events if the lord of the manor says no, the matter cannot go forward at all under any circumstances. It puts a complete stop to it. That does not apply to metropolitan commons; they are a different case. A Provisional Order under the 1876 Act must be consented to by two-thirds in value of the commoners and the lord, so if he is not prepared to go ahead nothing can be done under the Inclosure Acts at all and there is no provision, so far as I am aware, for overruling the lord on that. That may once have been justified.

It has to be remembered, Sir, that these Inclosure Acts are the result of the practical experience gained in inclosing land over centuries, not something which has just been thought out. They embody the practical experience of persons in inclosing land and to that extent deserve respect, but that practical experience was gained mainly during the 18th and first half of the 19th centuries. In those days conditions generally were very different from what they are today, and social and political conditions were vastly different.

There are two further observations I should like to make on the Inclosure Act. The first is that it does seem that those Acts give far too much attention to the rights of the commoners and the lord, and not nearly enough to the public interest. Secondly, it seems impossible to believe that in the 20th century a more simple and workable procedure could not be devised.

818. You would like to get rid of the system of regulation or inclosure by Provisional Order, or by in some cases special parliamentary procedure, in relation to common land?—The special parliamentary procedure applies mainly where there is a question of compulsory purchase of land or appropriation of land by a local authority for a particular purpose. In our memorandum we do not suggest that either of those things should be done away with. I think it may well be that the Commission may in the

course of its deliberations find some means of simplifying very greatly the inclosure procedure; but even under the procedure which we propose for implementing the policy that all land should be put to the best use in the national interest, the Provisional Order does come into it. It is not, however, an order requiring any affirmative resolution on the part of Parliament. Parliamentary review is still preserved by the fact that it can go before a committee which will examine it to see that it is all right. But it does not require an Act of Parliament as at present for its confirmation; it takes effect unless there is a negative resolution of either House.

819. *Mr. Floyd*: Could you give us an example of improvement being obstructed by the lord of the manor? Is it not the other way; you have to get all the commoners to agree and the poor old lord has no say one way or the other? Some lords would like to see their common land improved, but they have to get consent, even for draining the duckpond and so on.—I do not know of an example, and I would not want to suggest that lords as a class are unreasonable, even if they are only persons who have purchased lordships because they like to hold a few manors. What I am trying to say is that it is very difficult to justify that power in anyone, however reasonably it may be exercised; but I certainly would not suggest that any widespread evil had resulted from the exercise of it. Any evil has resulted from the archaic nature of the procedure generally. It is that which has resulted in many commons gradually dying out, and ceasing to be living organisms. I am certainly not accusing lords generally of being in any way unreasonable, nor do I know of any specific case.

820. *Chairman*: May we go on to my next question: though in the extract from your book 'Feeding the Fifty Million' reference is made to public access to commons for purposes of air and recreation, no reference to this use is made in your memorandum. Could it not be said that in many cases the best use of the land is its use for recreation? Would it not be necessary for the Commons Committee to regulate such matters as the parking of cars, the lighting of fires, the disposal of litter and so

* Commons Act, 1876. s. 12 (5).

forth?—Sir, as to that, in the first part of our memorandum we say:

‘In some cases, all that is required may be a better regulation of existing rights of common; in others enclosure may be desirable. Some commons may best be used for afforestation. Others may provide sites for housing or industrial development, while in yet other cases the best use of common land may be for an open space and public recreation and enjoyment.’

I think that is probably covered, Sir, because we recognise that sometimes the best thing to do with a common is just to leave it alone.

821. In the case of urban commons and a few rural ones, there is a legal right of access. Are you proposing, where the best use of the land is some other use, that right may be taken away?—It may involve that.

822. Where the land should be afforested, for example?—It might involve it, not necessarily permanently but possibly for a period; that depends on what the best use is. That, Sir, is a thing that arises under one of your later questions as well.

823. Yes, a later question looks at it from rather a different point of view. Do you contemplate that the Minister should have power to establish a Commons Committee on his own motion, or must he receive an application from some person having an interest in the land? What about a claim for public access?—Generally I would say that I do not think my Association would in any way be opposed to the general principle of ensuring a right of public access to commons wherever that could be done without interference with either the existing use or the proper use as subsequently established. So far from wishing to restrict in any way public access, I think it would be relatively simple to produce a procedure, not at all complicated, for extending the right of public access to commons. For example, what I have in mind is something like this: I do not see any reason why in a proper case the Minister, after inquiry, should not make an Order providing for public access to a common under certain conditions and possibly for a limited time, say three years or something like that. There could be an appeal

from the Minister to Quarter Sessions, or if one thought fit, a suitable tribunal, and there could also be provision for compensation for anyone injured by that. If that were done for a limited period then one could see if there was anything in the complaint that the public should not have access to the land. It could then be found out whether in fact anyone had been injured by the right of access; if no-one, then let it continue. But I would submit that in relation to commons, generally speaking, the power to extend public access like that should be for a limited period renewable from time to time, not a permanent matter.

824. It has been suggested to us that there is such a great shortage of open spaces for the purpose of air and recreation on the part of the inhabitants of the great towns that every common should now be made legally open to the public; that is, all the rural as well as the urban commons.—I should have thought that might create great inconvenience and loss to the commoners in some cases, but in any event the same object could be substantially achieved by the procedure I was suggesting. The only thing is that that would enable the persons interested to object to it and also if there were any case in which the right of access to a common would be detrimental to the owners to a substantial extent then there would be an opportunity of not allowing public access.

825. You are proposing in some cases the land should be inclosed, are you not, under these schemes?—Yes, it might very well be necessary to inclose land.

826. Therefore the public would be excluded from it?—Yes, I was referring of course in the last reply to commons which remained uninclosed commons.

827. Yes, but the point made to us was that the need of open spaces is so considerable that no land should be inclosed in such a way as to prevent access by members of the public.—With great respect, I should have thought that went very much too far, particularly after the National Parks and Access to the Countryside Act of 1949, which gives the public rights of access to vast areas of land. Particularly in Scotland there must be hundreds of thousands of acres which are completely open to the public.

828. That right under the 1949 Act can always be taken away, can it not? I have not studied that Act very closely.—I have not studied it very closely either, I am afraid. All I can say is that so far as my Association is concerned we have no quarrel with anyone who wants any wider access to common land, provided it can be done consistently with the proper use of it and with the national interest.

829. May we have a little more information about these Commons Committees you suggest establishing? Are they going to operate by a majority vote?—Yes. May I preface whatever I have to say on that aspect with this: it will be appreciated that it is not suggested this procedure should be used for every common by any means. The first essential in the proposed procedure is that the Minister shall be made responsible for achieving so far as possible the general object of carrying out the general provisions of the Act. He will consider the state of particular commons and see whether any action is necessary in relation to them. The first thing that may be discovered is that a great many commons are working perfectly satisfactorily and it is not necessary to do anything at all. That, I think, is one of the main things that may well be discovered. It is only in a case where there is a *prima facie* case for revision of the status of the common in a fundamental sense that it is necessary to employ some procedure of this kind in order to implement the general objective of the policy on the commons.

830. *Professor Stamp*: Does that not contradict what you have already said, that the existing legislation is inadequate? Now you have said that as far as a large number of commons are concerned the position is satisfactory, but you still want legislative powers in case it is not?—I am not able to give evidence on the proportion of cases in which it is satisfactory and the proportion in which it is not. I can refer the Commission to what I shall put forward as a high authority for the view that vast areas of common land could in fact be improved with advantage for agriculture and forestry.

831. Am I right in thinking, then, that you want new legislation which would enable action to be taken if necessary, but that probably action is not required in a large number of cases?—That I think

puts it quite fairly. I think there are a large number of cases in which action is not required at the moment. I think it is very likely that to try to revise the status of many of the commons which exist today would be unwise politically and from every point of view, and unnecessary from the practical point of view so far as achieving the objective is concerned. The best thing to do would be to leave well alone. If all is working properly as in, for example, many of the Welsh mountains where farmers have common rights and the common is being grazed properly, there is no need to do anything—I would save the question of public access at the moment. In those cases leave well alone.

What my Association in particular have in mind is the moribund common where you have large areas of land covered with gorse, heather and bracken, which are really not serving any very great national purpose except in those cases where, by reason of their situation and one thing and another, they are being used for the public's recreation and enjoyment.

832. You would only set up the Committees which you mention in those cases where you regard something as wrong? You would not regard it as necessary to have a Commons Committee for each common?—Certainly not.

833. *Mrs. Paton*: I would like to ask you how you would ensure that common land is put to the best use? How do you know those you are referring to now are really put to the best use if you do not have an examination of them?—I think I must mention again that when I say 'Ensure that land is put to the best use', that is a principle and an objective, but it is not something to be applied rigidly in all circumstances in an arbitrary manner.

The Minister who would be responsible for administering a scheme of this nature is in a practical position. What he would do, as I take it, would be something like this: he would obtain reports, from the Agricultural Executive Committees probably, in the first instance; from those reports it would immediately become apparent what was the general nature of the commons in those districts, and some commons would be eliminated almost at once as requiring no action at all. Others might appear to require action of some sort at some later date.

On the other hand, there would be cases in which there would be reason for more or less immediate action. In those cases the Minister would begin to operate the procedure we outline: first get the facts—that is the most important thing, and that in itself very often solves a lot of problems. What are the facts? First, the legal position, then the agricultural position, then the forestry position possibly—those are the most important facts in relation to large areas of moribund common. When you have got that information is the time to think whether you go any further.

834. *Professor Stamp*: Do I gather that you consider a first essential to be a survey of all commons in the country?—No, Sir, because there may be many cases where it is not necessary to survey them.

835. I probably used the word 'survey' in an ambiguous sense; but you consider there should be a review of all commons in the light of the knowledge in the hands of the County Committees?—If anyone is to be responsible for carrying out a national policy that common land should be put to the best use in the national interest, clearly one of the first things he must do is to obtain information as to the present use.

836. That is what I implied by having a survey.—But I do not mean in relation to each common there should necessarily be a full scale inquiry into the legal position or even formal inquiry into the agricultural position. I am only thinking of a preliminary report from the Agricultural Committee. You must review all the commons, decide where the position is satisfactory, and then concentrate attention where the position is revealed as unsatisfactory.

837. *Mr. Arnold-Baker*: What is your criterion of the national interest?—What is the best use of any piece of land in the national interest is a question of fact. All that can be done is to establish machinery for finding that fact out.

838. Yes, but by what criterion is that machinery to work?—It can only work of course on the comparison of different contemplated uses and weighing up one against the other.

839. *Professor Stamp*: Do you mean a matter of fact or a matter of your subjective judgment?—I think perhaps

you are right there; in a way, of course, it must depend on judgment. We have said in our memorandum that the working of the scheme must depend on the judgment, good faith, integrity and political skill of those concerned, and the vigilance of Parliament. That is all it can work on. We can only prescribe principles and people must apply them as best they can, but surely we would say it is better to have some principle and try to apply it than to have no principle at all.

840. Suppose we laid down the principle that the best use in the national interest was the maximum amount of area for air and exercise for the urban public, would you regard that as a proper principle?—It would not be a principle with which I should agree because it would be much too wide. The whole essence of our Association's approach to the matter is to try to avoid so far as possible great generalisations as to what should be done with common land. The reason is this—if I may use a popular expression—a common can be anything from five acres of Tom Tiddler's ground which everyone has forgotten all about, to half a mountain actively used in common by several farmers. That is really the essence of the problem of commons, that when you speak of a common you cannot ever have anything at all definite in mind. It may be nothing more than a few acres of land covered with gorse and bracken; no-one knows who the lord is, whether there are any commoners, and so on. On the other hand it may be a living thing, a living organism; therefore how is it possible to say, in our respectful submission, in respect of commons generally, that any use is the best use? You cannot say it because it depends on the circumstances what the best use in the national interest is. It is always a problem to be decided as a matter of fact and judgment, when you have got the common before you and all interested parties there.

841. But the first thing is to define what is 'the national interest'. You are using the phrase 'in the national interest' very frequently, but I am not at all clear what your Association regards as the national interest.—It is not for us to apply the policy, Sir. We do not govern the country. That would be a matter for the persons in charge of the affairs of the country at the time,

the government and Parliament. We cannot do any more than show how responsibility for carrying out a policy falls upon Parliament and Ministers and the government. Surely, is not the government constantly judging what the national interest is? I very much hope so.

842. *Mrs. Paton*: Is not your main aim and idea, the policy to be adopted, to get more food from the land?—Yes, but in relation to our submissions to the Commission, that is more or less incidental, because we are in this dual position: we think, and I hope to refer the Commission later to the reasons why, that a great deal more common land could be used for agriculture but at the same time we equally recognise that the best use may often be an entirely different one.

843. I think we have had the figure that the total amount of common land represents only four per cent. of the land of the country at the moment. Is that the figure you have in mind?—Possibly I may refer the Commission to what we have brought here in support of our contention that a great deal of common land could be better used for agricultural and forestry purposes, if you would be prepared to hear that now, Sir. I do not think it is necessary for us to rely on anything more for that than the view of Sir George Stapledon in his book 'The Land Now and Tomorrow'. That was first published in 1935 and was reprinted without change in 1942. What he says, at p. 109, is:

'The question of land tenure is of special significance in connection with the improvement of rough and hill grazings. In England and Wales it is now estimated, with some degree of accuracy, that 1,200,000 acres of the total 5,000,000 odd acres are grazed in common as distinct from those in sole occupation.

'The area of commonable land in Wales is probably about 500,000 acres. Most of the common land in England and Wales is in those counties that have large areas in rough and hill grazings, and much of such common land is at relatively high elevations. Large acreages of common land are met with in the following counties:'

Then Sir George Stapledon gives these figures:—

	Acres
*Cumberland ...	104,730
Yorkshire (N.R.) ...	175,705
Yorkshire (W.R.) ...	134,553
Devon ...	160,101
Brecon ...	142,101
Montgomery ...	107,736
Radnor ...	66,537

He continues:

'The common land in many of the above counties contributes more than 50 per cent. to the total of rough grazings. Lancashire, Westmorland, Durham, Northumberland and Shropshire also have relatively large acreages in common.

'A very considerable proportion of the commonable rough and hill grazings are eminently improvable; this is particularly true of the Eppynt and other areas in Breconshire. In Radnorshire many of the commons are now completely overrun with bracken. There are, for example, two large areas of almost pure bracken in the Newchurch district standing at about the 1,000 ft. contour, each of about 500 acres on easy gradients, practically all of which could be easily converted into very useful grazing land.

'It is, however, nobody's business to initiate and pay for the improvements. Commoners are jealous of their privileges, and although an improved common would be greatly to the advantage of all having grazing rights, one cannot conceive of the commoners uniting together and deciding to finance an undertaking for their mutual benefit.

'More than this, the Commons, Open Spaces and Footpaths Preservation Society'—

with which I may say my Association has no quarrel at all—

'is deeply interested in preserving the commons for the recreation of all and sundry—I am no less interested. I argue all along—and I have had innumerable arguments with friends who love hill country as much as I do—that the sort of improvements which I envisage would not in any way detract from the amenity value of the areas so improved. In fact the opposite would be the case: the improved

grass would only heighten the contrast between the various shades and tones of vegetation proper to such country. Nobody, as far as I know, and least of all I myself, would advocate the radical improvement of all our hill grazings, and it is only exceptionally that great blocks of country extending to thousands of acres could usefully be taken in hand in toto and as one unit.

'The acreage involved, however, is in the aggregate large, and it is therefore very important to emphasize the fact that common land is not predestined to be waste—it can be improved. The same is, of course, true of a considerable amount of land held by the National Trust, and I wonder what the views of the Trust would be if, for example, the grazing tenant (if such there be) on the Holnicote Estate (between 6,000 and 7,000 acres of moorland and wood on Exmoor) came forward and said he desired to tractor up and improve say 300 acres of moorland.'

Then, on page 111:

'Although the great bulk of the rough grazings is part and parcel of our hill and mountain land, yet in the aggregate there is a large acreage which occurs as outliers, each of which may not occupy more than a few hundred acres.

These outliers present special problems. They are often isolated from the main 'mountains' and they lie nearer to habitations, and are liable to be frequently and indiscriminately burned over. The vegetation usually consists in large measure of stunted heather, *Vaccinium* and *Nardus*—the grazing value is of the slightest; indeed, many such areas are put to very little use.'

Then, further on:

'Save for common rights, where they exist, I should be definitely in favour of afforesting a large proportion of this type of country, because to do so would not have any appreciable unbalancing effects. On the other hand, the gradients are gentle, and good grazing lands could be made over a large proportion of these 'outliers', when they could often provide good wintering for mountain ewes.'

Those are the views of Sir George Stapledon, a high authority, and in my submission they are sufficient to establish our proposition that a great deal of the common land could be more effectively used for agriculture and forestry. Of course when Sir George Stapledon is arguing in his book that it should be used he points out that he is to some extent putting forward an indictment, and not considering the arguments on the other side very much; but we do not have to persuade you, I am sure, that it ought to be used. Our point mainly is that it could be so used and whether in fact it ought to be used in any particular case is a matter of policy with which we are not concerned, but what we are concerned with is that there should be machinery which is adequate to secure the use of a common for those ends, should that use be considered desirable.

844. *Chairman*: You decide that a particular common ought to be dealt with in this way and then you come, in paragraph 6 (d) of your memorandum, to what might be the composition of the Commons Committee. It might include, as circumstances dictated, the owner of the common, the commoners, the County Agricultural Executive Committee, the planning authority, other local authorities, the National Farmers' Union, and voluntary associations such as the C.P.R.E.—I should have added, the Commons, Open Spaces and Footpaths Preservation Society.

845. Are they not a part of the C.P.R.E.?—Anyhow, I certainly meant to include them.

846. This Committee is going to be the initial committee to decide what is the national interest in respect of this particular common. Are they not going to differ among themselves according to what I think Professor Stamp called their 'subjective judgment'?—Of course they may.

847. Then who is to decide what is the national interest when you have got this Committee functioning and making recommendations?—There are two things which might enable a committee, even so constituted, to produce a scheme. The first thing is that it has been proposed that the chairman and possibly the secretary should be appointed by the Minister. The second thing is that in the course of actually applying this pro-

cedure over the country precedents will be developed. It will be discovered that there is a certain way in which it is convenient to deal with things—for example, certain draft schemes, draft clauses for schemes and so on can be prepared—and by a combination of those things, with a certain amount of luck, it should be possible, we think, to guide each Committee to produce an agreed result.

Of course the whole object of having such a Committee set up to produce a scheme is to ensure that the scheme, when finally prepared, shall not only be in the national interest but also locally acceptable. As a practical scheme for carrying out the general principle, it seemed to us it was best to get everyone together who had any interest in the common and give them every inducement to produce a scheme while at the same time making available to them all possible advice and assistance.

It may be in some cases that once the basic essential data has been got as to the local agricultural and forestry position it will really become quite clear what ought to be done with the common. Half the trouble with the inclosure system was this, that the fact-finding part of it got mixed up with the policy-making part. The outstanding feature of our proposals is that the facts should be got first before starting to decide policy. For example, under the inclosure system the Valuers' business was to decide what claims there were and so on; but we would suggest that long before any question comes of having a body of people to decide what is to be done, to propose a scheme, long before that all the essential facts should be got so that they would be starting from something solid.

848. To take an individual case—let us say a common in Herefordshire is used by the inhabitants of Birmingham at weekends when they come out in their cars—how is that Committee, which is mainly representative of local interests, to give effect to the interests of the people of Birmingham?—I should not have thought that the Commons, Footpaths and Open Spaces Preservation Society would have been slow to advance the claims of the people of Birmingham.

849. They are only one member, presumably, of a Committee which represents the commoners, the County Agricultural Executive Committee and

so forth. Supposing they disagree?—In the first place it is to be hoped that the Commons, Open Spaces and Footpaths Preservation Society, no more than any other persons concerned, will advance their views unreasonably—they are only one interest, and the whole essence of the scheme is to try to persuade people to subordinate their sectional interests to the national. Suppose they do not agree, suppose you find someone standing out; then you have this position, that they will be able to present a sort of minority report to the Minister. It is up to the Minister to decide whether he is going to approve the scheme with or without amendments, and in deciding that he can take into account the representations of any persons who have found themselves unable to agree with the majority.

850. That is what I was getting at: you have in fact a sort of appeal to the Minister?—Yes, in the sense that when they have said all they can in the Commons Committee and failed to persuade their colleagues as to a certain course, they are still able to advance that course before the Minister.

851. *Mrs. Paton*: In paragraph 6 (f) of your memorandum you say that if the *ad hoc* body were unable to agree upon a scheme, the Minister should be empowered to produce and proceed with his own scheme. That is where the minority view would be placed before the Minister, is it not?—The way we see it working is that you set up your *ad hoc* committee which represents as far as possible everyone who has any interest in that common, try to get them to produce a scheme, having your chairman and secretary and draft schemes; and, if it can produce a scheme which goes before the Minister he can approve with or without modifications. The fact that he can approve with or without modifications means anyone can have another go at the Minister. If they cannot produce a scheme the Minister would be empowered to produce one.

852. *Chairman*: You keep referring to the Minister. The Minister who is charged with the co-ordination of land use is the Minister of Housing and Local Government. You have that Minister in mind?—No, we would certainly say the Minister of Agriculture. But there is no inconsistency in that. There is no reason why one Minister should not be

responsible for keeping land use generally under review and another be responsible for carrying out the policy in relation to commons in particular. We should particularly like the Minister of Agriculture to do it in relation to commons because he has had so much experience, and so often the best use is agriculture or forestry or both. I certainly would not have the Minister of Housing and Local Government in on that.

853. *Professor Stamp*: You would prevent the Minister of Housing and Local Government from performing the function for which he is appointed?—Not exactly, because while in terms the Minister is responsible for seeing that land is put to the best use in the national interest, yet he does it only in so far as it can be done under the Planning Act; that is the Act which he is responsible for administering.

854. *Chairman*: I think the statement is in the Town and Country Planning Act, 1943. It is a general statement, made when the Ministry of Town and Country Planning was established, and has been inherited by the Ministry of Housing and Local Government.—However, those are matters for the Prime Minister, which of his colleagues will do it I do not know. The memorandum does not say which Minister should be responsible to Parliament for doing it. The government must organise it as they think fit. They can have all the Ministers change their titles, call them first Ministers of Planning and so forth, then Housing and Local Government, and allocate the business as they may consider appropriate; all we have suggested is that there should be someone responsible to Parliament. But if you asked us who we would like it to be, then we should certainly say the Minister of Agriculture, and he must make his peace as well as he can with the Minister of Housing and Local Government.

855. On the other hand, those who are primarily interested in the air and exercise provided for Birmingham, would prefer to have the Minister of Housing and Local Government?—Of course, he is not entirely without his voice, in the sense that the local authority, which is the planning authority, would certainly have to be represented, and I am certain that the views of the Minister,

as indicated to the planning authority, would not at all be in the background, so that is really catered for.

856. May we come to my next question. I was not quite certain what you meant by this responsibility to Parliament. In paragraph 5 you state that the procedure must be subject to Parliamentary review. Am I right in inferring from paragraph 6 that you mean only that the Minister should be responsible to Parliament for the scheme? You do not mean that the scheme should be specifically approved by Parliament?—As to that, when we say that it should be subject to Parliamentary review, that is something which we have actually carried into effect in the scheme, in two ways; in the first place, by making a Minister responsible for it, you subject him to the possibility of having questions in the House of Commons, on anything in relation to commons. That is the first aspect of the matter. The second aspect of the matter, in which Parliamentary review again comes in, is that if the matter is proceeded with, the scheme would come into effect by an Order of the Minister, subject to annulment by resolution of either House.

857. It would be laid on the table?—Yes. At the moment it is much more complicated than that. With respect, the Provisional Order Confirmation Act does seem to be unnecessary and a waste of Parliamentary time—and everyone else's time—because I do not think there has ever been a single case where Parliament has failed to approve a Provisional Order under the Inclosure Acts. That is what Halsbury says. There was one case where an attempt was made to prevent a passage through Parliament, but it did not come off. In other cases, I think this is correct, the matter has in fact gone through. The only thing is, of course, that having to be done by Act of Parliament, it has got to be brought up so many times in the House, and takes time, which is unnecessary. All that is necessary is that Parliament should have the opportunity, if it thinks fit, to disapprove of the scheme.

858. There must have been cases where private interests have challenged an Order, and have challenged it before the Private Bill Committee. Do you mean that in every case the House of Commons has approved it, in spite of

this examination?—I think that since Provisional Orders of this kind have been approved in Select Committee and sent forward in confirmatory Bills to the whole House there has only been one case, and that unsuccessful, where an attempt has been made to stop the Bill.*

859. In any case, you want to get rid of the Provisional Order system?—Yes.

860. And, presumably, of the special Parliamentary procedure in the case of acquisition, too?—Yes. I do not see any reason why that should not be done the same way.

861. Can I come to the question of registering common rights, which seems to be a very difficult question? I suppose you would agree that in many cases these rights are very difficult to ascertain, and that their proof would be extremely expensive?—Yes. In some cases that would be so. On the other hand, where a right of common has been exercised without interruption for 20 years, and where there has been no objection on the part of the owner, I think there is authority for the view that would justify a jury in finding that the right had been exercised from time immemorial.† So, really, it is not quite as bad as it looks. It is only bad when you get a deeply contested case and the thing has got to be proved in its full strictness. But so long as the matter goes virtually unchallenged it is not, in general, difficult for a man to have his rights. Of course, there might be some question as to whether it is appendant or appurtenant, but those are matters which the Land Registry ought to be able to sort out, without any great difficulty.

862. Are there going to be tribunals going round to investigate these cases?

—In the first place I would say this about procedure, generally, that in the submission of the Association it is one which might well be found useful, quite apart from anything else in the proposals in general, because it does cover a lot of what now goes on under the Inclosure Acts, or would if they were effective, in relation to adjustment of rights, an important part of which is always ascertaining what the rights are.

* See Halsbury, *Laws of England*, 3rd Edn. Vol. 5. § 872 note (e) p. 380.

† *op. cit.* Vol. 5. § 759 note (h) p. 329.

It will take the place of that. It is not suggested that this should be applied to all commons, by any means.

863. You are not going to have a complete examination of all the common land?—Certainly not. Let us, by all means, hope that will never be necessary. Our policy has always been to leave well alone, unless it is necessary to interfere. But there are cases where it is desirable, or would be desirable, in our submission, to find out what were the rights over a common, and in those cases the Land Registrar could make an order to the effect that in that case it should become virtually a compulsory registration area—that is what it would amount to—and also that registration there should extend to the common rights as well as to the land itself. He would do that either on his own motion, or when requested by the Minister.

864. Do you mean the whole area of the local authority, or what?—No.

865. It is only the common?—The area of the common, or reputed common. Here, there is a phrase in the memorandum, which needs to be expanded. We say that 'The Chief Land Registrar should be empowered to require the registration of any land over which rights of common were claimed, and also of those rights themselves.' That really should be expanded to 'any land within the scope of the Inclosure Acts'. There might be land which was liable to be inclosed under the Inclosure Acts, but over which it subsequently turned out that there were not any claims to rights of common, and if you were to take our words here literally, it would not work. What I really mean is that the Registrar should be capable of requiring any land subject to inclosure by the Inclosure Acts, and the rights, to be registered.

866. That is a common which would come under Section 194 of the Law of Property Act, where a common, so to speak, which was a common in January 1926, remains a common permanently. Is not that the position? Unless certain steps are taken to get rid of common rights, even where they are bought out, it still remains a common for the purpose of public access?—I was not aware of that. I have the Act here.

867. In sub-section 3: 'This Section applies to any land which, at the com-

mencement of this Act, is subject to rights of common:

Provided that this Section shall cease to apply (a) to any land over which the rights of common are extinguished under any statutory provisions; (b) to any land over which the rights of common are otherwise extinguished . . . as, for example, by purchase of common land. —But this Section, with respect, seems to be dealing with restrictions on inclosure of commons.

868. Restriction on fencing, and so forth—not necessarily on inclosure. I am simply taking that as a definition.—A definition of a common, especially. I was going straight back to the Inclosure Acts, and the various types of land which can be inclosed under those Acts.

869. That is the definition we have taken—land which is incapable of being inclosed under the Inclosure Acts, and town and village greens.—The Registrar could require the registration of any of that land.

870. Including all the rights?—Of course, at the moment, rights are not registrable, but the essential feature of the scheme is that they would then become registrable in that area—not elsewhere.

871. You would have the land registered, with the rights—a register of the land?—Yes, the object of the procedure ultimately being the publication by the Registrar of a report on the legal position relating to a common, which would begin first by defining the extent of the common, presumably by reference to a map or plan. It would then go on to say who owned the soil on the common, and then it would say that the owner, for the time being, of the farm known as Green Acres has the right to put 50 cattle on the common, and so forth, putting all those rights out as they were proved. The report would also mention any local Acts of Parliament referring to it, or any Orders which had been made in relation to the common, and so on. It would give a complete legal picture of that common.

872. In most cases, that would take a good deal of investigation by some tribunal. Is that not so?—Of course, the Land Registrar, himself, is a tribunal.

873. Yes, but he would have to appoint somebody?—Yes, he appoints a person, but the reason we suggest that it should be done by the Land Registrar is that he has very experienced conveyancers, who are very well able to investigate matters of title of all kinds, and it seems scarcely possible to conceive of persons who could do the job better. Of course, the Land Registry works under rules which are made by the Lord Chancellor. Naturally, at the moment, those rules apply only to titles to land, and the Lord Chancellor would have to make other rules, which were suitable to rights of common, and so forth. But it does seem to me that if the rules were suitably adapted to rights of common, in most cases it would require little more than a preliminary enquiry as to the nature of the right claimed, followed by the completion of a questionnaire and perhaps a statutory declaration, to establish the legal position of that right on a firm basis. For example, if it were a common of turbary there would be certain set questions to be answered appropriate to commons of turbary and, in an ordinary straightforward case, once that had been done a statutory declaration would probably finish the whole matter.

874. Yes, but what happens in a difficult case, where there is a controversy?—Where there is a controversy, there is provision for a decision on the matter by the Registrar, in the first instance. There is also provision for an appeal from the Registrar to the Chancery Division.

875. Who is to hear the cost of this?—As to the cost, as the original registration is really required for national purposes, then it seems fair to me that the cost of the registration—that is to say, the proper expenses of persons having their titles registered, and the fees—should be paid, in the first instance, by the State. After all, if it is needed for national purposes, then why should not the State pay for what it wants? It wants a report on the legal position and, therefore, it should pay for it. On the other hand, land registration does carry advantages and benefits—at least, in my opinion it does—and I do not see any reason why, on the first transfer of that land, those fees should not be paid. In other words, let us have the

fees borne by the Government, in the first instance, but if a person who has the rights transfers them, then he is in just the same position as someone registering for the first time in a compulsory registration area. That is the way I would deal with that.

876. So whenever any person, who had a right of common in gross, for example, died then his executors or the solicitors acting for him would have to get the change of title registered?—They would get the change of title registered, but I am not certain they should pay the fee, then. I contemplated only on dealing.

877. On sale?—Yes, on sale.

878. *Mr. Floyd*: Might I ask how you would recommend dealing with lapsed rights. Take the Surrey heaths, for instance, they are now so driven over by picnickers, there are so many glass bottles on them, and so many motor-cars travelling fast along the roads, that commoners who have rights to graze do not exercise them, and they might well not have been exercised during the past 10 or 15 years. If we were in the happy position of saying 'These commons must have good grazing' they might want to reclaim those rights, even though they might not have exercised them for a long time. So when it is said that the ascertainment of rights should not normally be very difficult, I feel that is an optimistic view. Would you set a time limit, beyond which common rights would not be recognised, or how would you deal with them? Are there not a great many commons which are not grazed, simply because of the interference of the public, at the moment, and that has two-fold consequences: the less they are grazed, the more they are grown over, and the less used they become?—Yes, that has really been the whole trouble. From that point of view, I think it would be a very good thing if rights could be registered, and thereby be better established, but I should not have thought that the mere fact that the right had not been exercised for 10 years would create any insuperable difficulty in most cases. In a case such as you put forward, where you have a number of commoners, all of whom are suffering from some grievance so that they cannot exercise their rights, they are much more likely to support each other's claims, than to have any controversy

about what the claims are. I do not feel any great difficulty in these cases, about the establishment of a right. Again, I say in most cases that a suitable statutory declaration would clear the matter up. Sometimes, of course, the right of common would be shown on the title deeds. Let us put it this way: whatever difficulties there may be in establishing rights of common, no one, I think, would advocate that a person who had not got a right should be able to exercise it. In other words, no one is trying to improve a bad claim or, on the other hand, to prejudice a good one. People have got rights, or they have not got rights. Whatever rights there may be, in my submission the Land Registrar is as good a person as anyone else to ascertain them merely from his great experience in these matters. That is the point. The fact that they were registered would be a tremendous help to the commoners, as well as to everyone else, in relation to a common, and everyone would then know where they were.

879. Would you not agree that if the common grazing were improved, it would not only be necessary to register the existing rights but, probably, to grant new rights to keep sufficient head of stock to maintain the grazing?—In certain cases that might be so. Of course, that is a procedure which would normally come under the 1876 Act, is it not? That would be a question of adjustment of rights, and it would be a matter for the Inclosure Acts. The great adventure would have to begin in relation to that common, which is rather a horrible prospect, and I do certainly think that there might be a much simpler provision—nothing to do with our scheme at all—for adjusting rights of commoners, without going to an Act of Parliament. It seems extraordinary that one should not be able to make what should be a universally acknowledged and quite proper modification of the rights of commoners and the law, as between themselves. The public has really got very little to do with it, and they will still be able to go on the common, as they did before. They will not mind whether there are 60 cattle on it instead of 40, and I should have thought little matters like that could have been decided by the Minister, after proper enquiry, without an Act of Parliament. One can readily see that where the public interest is involved Parliament would have to have

an Order laid before it, but where it is just a question of some minor alteration of the rights it seems extraordinary that one has to go right through the Inclosure Act to put that right.

880. *Chairman*: May we come to my last question which we partly considered earlier? Do you contemplate that the Minister should have power to establish a Commons Committee on his own motion, or must he receive an application from some person having an interest in the land?—There, we would certainly say that he should have power to establish it on his own motion. In fact, it seems to us to be one of the weakest points of the present procedure that it has to be initiated by the commoners or the lord, in general. Sometimes they are at loggerheads, and nothing can be done or, quite equally, the commoners may have more or less disappeared, in which case nothing can be done.

881. Or the lord of the manor may have gone?—Yes, he may have gone. He may be in the New World, or no one knows where he may be. That is really the particular point to which our whole procedure is directed. It is directed to this, that where you have these dead and dying commons it should be possible to review their position, fundamentally, by action by someone responsible to Parliament for that purpose, without a third of the commoners coming forward before anything can be done. They may have disappeared, so the answer to your question would certainly be, yes.

882. And then may I ask you what about a claim for public access. The public would never have a representative, except the Minister himself and through the Commons, Open Spaces and Footpaths Preservation Society?—Yes. The Commons, Open Spaces and Footpaths Preservation Society is very vigilant and no one would grudge them their interest at all. I stress, again, that our Association has no conflict whatever with those persons. The only thing I would say is that they are a little vociferous on this matter, but there is no conflict of interests at all, because our body is always concerned to stress the importance of looking at the common as an individual case—a particular common. That is always our anxiety, that there should not be some sort of general scheme, which really could not possibly apply to commons of different types and circumstances, be-

cause they vary so much. But so far as public access to a common is concerned, of course this is a matter on which—I am speaking for myself—I do not see any reason at all why there should not be, as I have already mentioned, a much simpler procedure, if and so long as that public access can be granted without interfering substantially with the rights of the persons who are there already, insofar as those rights are being exercised. In other words, I would say that the Minister should be empowered in relation to any particular common to prescribe by Order for the public to have a right of access to that common, subject to conditions specified in that Order, and that that Order should, in general, endure for a limited time. It should be for a period of years and he would, of course, exercise that power, not in an arbitrary sort of way but after enquiry, because whether the public has right of access to a common or not is not a political matter; it is a matter on which a fair man, an honest man trying to do his best, could readily come to a sensible conclusion. I do not see any reason why, after proper enquiry, a Minister should not be able to decide whether or not such a right of access should be granted. I would provide for an appeal from the Minister to Quarter Sessions, which is quite a customary and useful tribunal for this purpose, because the Justices have traditionally got a sort of residual power in these matters. Many such matters are referred to the Justices.

883. About what? Appeal against a right of access?—Appeal against an Order of the Minister granting rights of access to the public. In other words, if a person were sufficiently aggrieved by the Minister's Order that the public should have a right of access, then he should be able to appeal against that Order and have it quashed at Quarter Sessions.

884. *Mr. Lubbock*: Quarter Sessions would be working as a Court of Equity determining whether it was reasonable to grant that right, in the circumstances?—It would not be quite in that position, because one would have to provide a matter of fact, on which there could be litigation. One would have to say that if such and such a state of affairs existed, the Minister may order this, that or the other. Then you get your appeal to Quarter Sessions, on the question of fact—whether it exists. For example, if

the Minister is satisfied that a right of access to the public can be granted without detriment to the proper exercise of the rights of the commoners, or something of that kind, then he may order, but then those persons, I would say, could appeal to the Quarter Sessions on the question of whether, in fact, it could be granted without detriment to their rights. However, that wants a bit of thinking out, and is not part of our memorandum. But I do think that Quarter Sessions would be a useful body for that purpose. I realise that there may be grave objections to appealing from a Ministry decision to Quarter Sessions. I quite appreciate that, and one would have to frame it in a different way.

885. *Chairman:* You were assuming a formula in the Act of Parliament, which the Minister would have to administer, and if he had incorrectly administered the formula then the Quarter Sessions could over-rule him?—Yes.

886. And either way? That is, if he had refused a right of access, you would still have an appeal from the Minister to the Quarter Sessions?—I, personally, would have no objection to that, but I do not think it would be necessary. I should prefer to leave it that the Minister can make an Order, subject to objection by, or on behalf of, commoners.

887. The Commons, Open Spaces and Footpaths Preservation Society might want to appeal?—They can pester the Minister. That is their remedy. They are not backward in coming forward. They would have ample opportunity of making themselves felt about getting this Order. I am sure they would adequately protect their own interests. But something of that kind would be so much simpler than the inclosure procedure, and, of course, there would also have to be some provision whereby, if anyone could prove his rights had been seriously affected during that time by the public having a right of access over the land, he could claim compensation.

888. From whom?—He would have to claim it from the Government, because it is the Government which is giving the right to the public, and if the public wants the right, and the public has caused injury to anyone in consequence of that right, then it is only fair that the claimant should get compensation from the Government.

889. We have not dealt with the question of how it is all to be financed; that is, how the Commons Committee is to finance this work.—That, I suppose, would have to be fundamentally in the same way as would be done under the Inclosure Acts; that is to say, by a rate, or sale of land. But so far as administrative expense is concerned that should be borne nationally.

890. Not by the commoners?—Certainly not. It is not the commoners who are initiating it, it is the Government, and it is they who would have to pay for the Committee which was enquiring into the position. The Government wants a certain objective to be achieved and it establishes machinery for that purpose. Clearly, therefore, in carrying out this policy, the Government must pay the costs of that.

891. But the benefit of the scheme goes to the owner of the land, and the commoners?—No, not exactly at all.

892. For example, if the grazing is improved, then clearly the benefit goes to the commoners.—Yes, that is quite right. But you see, grazing could not really be improved, could it, unless funds were available to improve it?

893. True, that is a point. That is why I am suggesting it.—So for that purpose it would probably be necessary to sell part of the land, or to raise a rate.

894. That is what I am getting at. You are assuming a cess on the commoners?—Yes, subject to this, that they would be able to take advantage of legislation such as the Hill Farming Act, or any other legislation which the Government might pass, to enable hill land or any other land to be improved. But, of course, that is a matter of agricultural policy, and nothing to do with commons.

895. And some part of the expenditure, in the case of a common which was used by the public, would be to improve the amenities of the common, so far as, say, the inhabitants of Birmingham were concerned. Who is going to pay for that; the commoners, the State, or the City of Birmingham?—That is one of the matters which they would have to decide. The persons producing the scheme, the Minister or the Commons Committee, would have to incorporate provisions for financing that in their scheme. This scheme is carried out under Provisional

Order, and anything put in that Order can have the effect of an Act of Parliament.

896. So you would, in fact, tax the City of Birmingham?—You could do what you liked when you got it through Parliament, but as with all things it follows precedent and what has been done before, and so forth. But we have to cater for widely differing circumstances—everything from 20 acres of forgotten land, to something very active in the way of a lowland common, or to a mountain. The only thing we can do is to set up machinery for working it out. The actual details must be decided in the course of working out that machinery, and at the end of that machinery we would provide the widest possible power, which is the Provisional Order.

897. It is not a Provisional Order. It is just an Order laid before Parliament. —That is more correct. It is an Order subject to negative resolution. When made, that Order subject to negative resolution has the force of an Act of Parliament. Therefore, there is nothing which ought reasonably to be done, that cannot be done under this procedure provided Parliament does not object. If it is necessary to raise money for some purpose there would be provision for raising it.

898. *Mr. Arnold-Baker*: I can see the Members for Birmingham objecting to our hypothetical Order, straight away. —Yes, but after all one must be reasonable about it. I do not think that you are going to find provision, in a scheme about part of Dartmoor, for levying a rate on the inhabitants of Cardiff, or something of that kind. I cannot conceive anything of that kind happening.

899. But you might find it for Exeter, or even London. We have been told that the 'benefit of the neighbourhood' extends to London, in the case of Dartmoor. —On the other hand, I can readily conceive that if it were thought desirable, as a matter of compromise, that there should be a car park established somewhere or other on Dartmoor, the cost of doing that might very well be defrayed by the local authority. But I do not think anyone can try to obtain statistics as to the part of the country from which visitors come, and so forth, and tax that part. I do not think anyone would suggest that, because it would not

be a practical proposition; that is the essence of the thing. Is it practical? I refer the Commission to the last paragraph of our memorandum. I consider it to be a very important one. What we say is this:

'An attempt to deal with commons in this way will bring many difficulties to light. But it is respectfully submitted that the procedure proposed will not create the difficulties. They are there already. Whatever provisions are made for commons, they will ultimately have to be applied to particular cases, when these difficulties will become apparent. In the submission of the Association it is best to recognise this straight away and to deal with the commons severally from the outset.'

That is our view of the matter, that all you can do in relation to common land is to set up a procedure for dealing with commons severally. You have to make it a procedure in accordance with the accepted principles of parliamentary government and it must be subject to Parliamentary review, and so on, but when you have got these elements, as we have got them now, it seems that you have got as near an approach to a proper system as you can have; first, the Minister responsible to Parliament, both for the carrying out of the procedure in general and in particular cases; then the fact-finding machinery, what we consider to be a valuable provision, so far as the Chief Land Registrar is concerned, with the ability to get the legal position of a common fully set out, as a result of that procedure, which in itself might solve a lot of problems; then the agricultural position and the forestry position, as a result of the report of the Agricultural Committee and the forestry officers—all those things done before any step is taken in relation to a scheme for the commons. Then, when you have got your facts you get everyone together who ought to be got together in relation to that common, and you give them time to prepare a scheme for regulation of the common—to decide its future in the national interest. Then, if they are able to do so, the Minister can approve it, with or without modification. If they cannot do so, they will report to the Minister and tell him what the position is, and what the differences are. Then the Minister can prepare a

scheme and after any objection there may be he can carry it into force by Order. He will have to answer to Parliament for what he has done. He will have to answer to Parliament for his due carrying it out. Therefore, he is made responsible. He is given powers which will enable him to carry out a national objective, and Parliament trusts him to use them, and supervises him in their use. Nothing more can be done. But this is not intended to interfere with the old procedure, essentially. That is to say, we have not directed our attention to the detailed reformation of the Inclosure Acts. I should have thought complete revision from top to bottom might, really, have been needed, if you must have it, but this procedure might easily slip into the Inclosure Acts, and be what you might call the halfway mark, if thought fit. Supposing if, as a result of setting up a Commons Committee to look into the position of a common—remember it is only to apply to moribund commons; not commons that are working perfectly well: you can leave them alone—and they decide the land ought to be inclosed, the Order, subject to negative resolution, which these people produce and the Minister approves, can take the place of the Provisional Order under the inclosure procedures, so you slip from one to the other. In other words, you can go on with your Valuer and so on, if you see fit to work out the details. That is what I had in mind there.

900. *Chairman*: Your scheme would, in fact, over-ride the existing statutory provisions, once it came into operation? —Yes. In fact, if necessary, there should be provision for any other statutory procedures to be stayed. Once

it started going you would stay everything else. But, in fact, that is not necessary—at least, I do not think it is—except, possibly, in one or two cases, because in almost every case no one can do anything without the consent of the Minister, the lord cannot approve the waste without the consent of the Minister, and so it goes on. The Minister has got a hand in every procedure and, consequently, it really is not necessary to provide for the stay of everything else, because it stays automatically. But that would be the general principle. Once you have decided to review the position of a common, fundamentally, then none of these other procedures would go unless the Minister agreed. Even if there should be a stay, it would not be an absolute stay. It would only be a stay subject to the consent of the Minister to its removal.

901. Is there any other point that you think we have not covered in the course of this discussion?—I do not know if my colleagues would like to add to what I have said.—*Mr. Holloway*: I have nothing to add. I think Mr. Stuckey has covered the points very adequately. It seems to me that the merit of it is that it is hardly likely, if this procedure were adopted, that you would get moribund commons. Local interest would be aroused and great good might follow from that, and that seems to me to summarise the approach we make. Whatever use is made it would be better than having a moribund area, which is not being used for any good purpose at all.

Chairman: Thank you very much indeed for having come and given this evidence, and also for providing us with some excellent material.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

6

Wednesday, 2nd May, 1956

WITNESSES

Forestry Commission



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WEDNESDAY, 2nd MAY, 1956

SIR ARTHUR GOSLING, K.B.E., C.B.

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SIR HENRY BERESFORD PEIRSE, Bt.

Deputy Director General

MR. H. A. TURNER

Secretary

MR. E. WYNNE JONES, C. DE G. (B).

Deputy Surveyor of the New Forest

MR. E. S. J. HINDS, O.B.E.

*Chief Clerk, Office of Director of Forestry for England
On behalf of the Forestry Commission*

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 2nd May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,

F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,

F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

SIR GEORGE PEPLER, C.B., P.P.T.P.L.,

F.R.I.C.S.

MRS. F. B. PATON, J.P.

PROFESSOR R. ALUN ROBERTS, Ph.D.

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PROFESSOR L. DUDLEY STAMP, C.B.E.,

D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Forestry Commission

I. FOREST POLICY

The basis of the Commission's forest policy is their Report on Post-War Forest Policy (Cmd. 6447) which was submitted to the Chancellor of the Exchequer in 1943 and was presented by him to Parliament. The full summary of the Report is attached to this paper as Appendix I and the more immediately relevant sections are reproduced below.

'10. It is necessary to envisage what area of forest Britain requires and how it should be managed. The Report proposes that the Nation should make up its mind at this stage to devote 5 million acres to the purpose. That area is required for national safety and will also provide a reasonable insurance against future stringency in world supplies. There are valuable contingent advantages associated with forests, such as the development and settlement of rural Britain.

11. The 5 million acres should not be merely planted with trees but also systematically managed and developed. This conception entails among other things the continuous application of good silviculture, the development of markets and internal transport, and the settlement of forest workers in a good environment.

12. It is estimated that 5 million acres of effective forest can be secured, as to 3 million acres by the afforestation of bare ground and as to 2 million acres from existing woodlands by selecting those woodlands which are better suited for forestry than for any other national purpose.'

* * * * *

'17. It is proposed that the attainment of the 5 million acres of effective forest be spread over 50 years, . . .'

* * * * *

'23. Due attention is paid in the Report to Amenity and Recreational Facilities, . . .'

* * * * *

'27. Large-scale and systematic forestry is necessary for the safety and welfare of Britain and holds out prospects of a reasonable return on the capital invested in it.'

2. The Report also recommended a detailed programme for the first post-war decade; this provided for planting by the Commission of half a million acres of bare land at a rate which rose by the 7th year to 65,000 acres a year and remained approximately at that level. In addition they recommended a programme of replanting of old woodlands by private owners and by the Commission. In order to permit of orderly and efficient planting of bare land on this scale, a programme of acquisition of bare land by the Commission rising to 139,000 acres in the 5th year, falling to 128,000 in the 6th year and thereafter to 65,000 acres annually was proposed.

3. Because of continued heavy pressure for home produced food, the intense competition for available labour in years of full employment, the rise in costs and the continued pressure on capital investment, it has been impossible to achieve the programme set for the first post-war decade.* Nevertheless the ultimate objective—5 million acres of forest of which 3 million acres will come from the planting of bare land by the State—remains valid. At present some 1,320,000 acres (including 81,000 acquired plantations) have been planted or are awaiting planting by the Commission. There are some 2,080,000 acres of private woods over 5 acres in extent and suitable for economic management though not all of this is adequately stocked. The total forest area is therefore 3,400,000 acres, leaving a balance required to make up the total of 5 million acres of 1,600,000 acres. In recent years the area of bare land acquired for afforestation has fallen. As a result the reserve of plantable land has fallen far below that necessary to support the planting programme which the Commissioners could otherwise carry out. Unless the rate of acquisitions can be improved, there is a serious risk that the planting programme which in the current year is 63,000 acres, including 25,000 acres replanting of old woodlands, will have to be still further reduced from the peak figure of 70,000 acres (including 27,000 acres replanting of old woodlands) planted in 1954.

II. LAND SUITABLE FOR FORESTRY

4. By far the greater proportion of the bare land necessary for the fulfilment of the Forestry Commission's programme must come from land at present used for rough grazing, mainly sheep. Since the Forestry Act of 1945 came into effect, land used by the Forestry Commission has been vested in the Minister of Agriculture, Fisheries and Food (in England and Wales) or the Secretary of State for Scotland (in Scotland). Before any bare land is acquired an assessment is made by officers of the relevant Department of its actual or potential food production. This ensures that land is only used for afforestation by the Commission if it is considered to be better so used than for food production.

5. But there are other interests which are also intimately concerned in the use of land. Some areas where forestry would be practicable and could be extended without serious harm to food production are in areas designated as National Parks or otherwise of special aesthetic value or very freely used by the public for recreation. An obvious example is the Lake District. The Commission do not think it would be in the national interest to press their claims for all the suitable extensive areas of bare land which occur in such areas; nor if they were to press them would the other interests involved be able to give way.

6. In yet other areas, the Service and Supply Departments have already taken or may have to take large areas for military training, experimental work, etc.

7. There are undoubtedly areas in private ownership, not at present being used to the full for food production, which would be admirable subjects for afforestation by the Commission but which have not been offered for sale voluntarily. It is not, however, the Commissioners' policy to recommend the compulsory purchase of such areas save in exceptional circumstances in which the economic, social and therefore national interest would clearly warrant it. (The Government's policy in this matter is set out in the extracts from Debates in the Houses of Parliament which are attached as Appendix II.)

* For practical purposes 1947 is taken as the first year of the post-war decade since it was not until that date that dislocation caused by the transfer of the Commission's staff to Timber Production for war purposes was overcome.

III. COMMON LAND: SUITABILITY FOR FORESTRY

8. The Commissioners estimate, on the basis of reports from their field officers, that something of the order of 800,000 acres of land subject to rights of common in one form or another, is plantable, though without a detailed survey it is impossible to be precise either as to the quality of such land or as to the nature of the rights of common.

9. Much of this land is extensively used either by right or by custom by the general public or lies in areas where special importance is attached to amenity. In the lowland areas especially much of it would be better employed if it were improved and used for agriculture than if it were put under trees. There is therefore no suggestion that all of this land could ever be regarded as available for forestry in any real sense. On the other hand, the decline in the intensity of grazing has meant that much of it has been invaded by trees, scrub, gorse, and bracken—a process which the arrival of myxomatosis has speeded up. Thus, many commons have become less and less valuable either for food production or for public recreation, and it is precisely these which are potentially the most valuable for forestry. There are no data to support an estimate but possibly even as much as one half of what is thought to be plantable, or 400,000 acres, could be used for forestry without prejudice to the need for food production or the need of the urban public for open spaces.

10. It is necessary to fence newly planted forests and areas of natural regeneration which it is hoped to retain against stock and often against deer and, hitherto at least, against rabbits for at least 15-20 years, and to limit access by the public during that period because of the extreme danger of fire and other damage; and modern techniques of afforestation, in upland areas at least, often require extensive draining and ploughing operations. Thus it would not be practicable to afforest common land without first inclosing it.

11. The legal obstacles to the inclosure of common land, and the risks attendant on inclosure otherwise than by statute, have been fully described in the Second Memorandum of the Ministry of Agriculture, Fisheries and Food and need not be repeated here, though it is worth remarking that, because of the long-term nature of forestry operations, the amount at risk, once a plantation has been established, is even more formidable in the case of forestry than of agriculture. Together, they have meant that in modern times it has been impossible for private persons to afforest land which, though it is in their possession, is subject to rights of common. Thus, areas which could, and in the Commissioners' view should, be under trees, are remaining derelict.

12. The Commissioners themselves have practical experience of the difficulty of acquiring common land for planting. In a case where the owner of the land and all known commoners signified their agreement the Commissioners were advised that they should proceed, if at all, by compulsory purchase order. They feel accordingly that, without a change in the law, there is little prospect that common land will be available to the Forestry Commission for planting even where the case for it is overwhelmingly strong.

13. If, however, the law were changed so as to provide some simple procedure for the inclosure of commons with the agreement of a majority of known commoners, the Commissioners believe not only that some common land would thereby be planted by owners, but also that substantial areas would be offered to them for planting.

14. There would, however, be cases where the commoners and other local people would refuse their consent to acquisition by a central authority such as the Forestry Commission of an area which for time out of mind had been as it were local property. There might also be a fear among a wider public that afforestation by the Commission would put an end to the opportunities they now enjoy (whether by right or only by custom) of fresh air and exercise, despite the fact that it is the Commissioners' policy in every case where it is practicable to throw open their

plantations to the general public as soon as it becomes possible to do so. To reduce such opposition, the Commissioners have evolved and put forward a plan for the creation of what may be called for convenience 'parish forests'.

15. The Commissioners have been impressed by the long and successful history of what can broadly be described as communal forests in some countries where there is a long tradition of forestry, notably in France, Denmark and Switzerland, and they feel that it would be admirable if a somewhat similar development were initiated in this country. Their plan is as follows: Where the owner of the soil and a majority of the known commoners interested in any common which *prima facie* was suitable for afforestation and which was not being fully used or likely to be used fully for any productive purpose signified their agreement in principle to its use for afforestation, it would be open to the Minister, after consultation with local authorities and other bodies who might be interested, to designate it as a 'parish forest'. Compensation would be payable to those known to be entitled to exercise rights of common and the freehold would be acquired—by voluntary negotiation—out of the Forestry Fund. Such portions of it as were most suitable for forestry would then be vested in a local authority. (It is for consideration whether any balance more suitable for agricultural use should be sold in the open market or retained and administered by the Minister. This is a matter on which the Commissioners are not competent to express any views.) Thereafter the Forestry Commission would plant and maintain the forest on behalf of the local community, financing the work from the Forestry Fund which is provided by the Exchequer in the form of Grants in Aid. If need be an advisory committee of local people would be set up to ensure that the Commission took local interests into account so far as practicable. Whether formally, through the medium of such a committee, or informally, the plans under which the Commission would establish and work the forest would be agreed from time to time in broad principle with local interests. Particular attention would be given to amenity, to providing access for the public to the maximum practicable extent and to the provision of picnicking and camping sites where appropriate.

16. When net expenditure plus interest on capital had been recovered, responsibility for the forest would be passed to an appropriate local authority, being administered by that authority in accordance with plans approved by the Forestry Commission. This would be analogous to the management of a private woodland estate by its owner in accordance with a dedication agreement. If need be the Commission would themselves do the work, charging a fee; but in many cases it would be both convenient and desirable that the local people should themselves manage the forest, e.g. by the appointment of a forester, with whatever technical advice from the Commission was necessary.

17. Provision would be made in general legislation for the proceeds from such a forest to be devoted, after suitable provision had been made for its continued management, to the provision of facilities for its enjoyment by the general public and to general local authority purposes approved in general terms by the appropriate Minister.

18. Brief notes on the New Forest and the Forest of Dean, as areas in which the Commission have a special interest and which are subject to rights of common, are contained in Appendix III to this Memorandum. A note on National Forest Parks is attached as Appendix IV.

Appendix I

REPORT OF THE FORESTRY COMMISSIONERS ON POST WAR FOREST POLICY (Cmd. 6447) JUNE, 1943

Summary

1. Wood is an essential raw material both in peace and in war. British consumption increased five-fold between 1850 and 1913. In the inter-war period it has fluctuated greatly but has tended to increase still further. In recent years about 95 per cent. of the consumption has been met by imports and only 4 per cent. by home-grown material. Softwoods account for about 94 per cent. and hardwoods for 6 per cent. of the whole. On the average of the five years 1934-38, Britain's annual imports included unmanufactured wood and timber 11·2 million loads (valued at £44·7 million), pulp of wood 2 million tons (£11·4 million) and wood manufactures £6·8 million—a total value of nearly £63 million.

2. Up to the beginning of the last war the United Kingdom (including Ireland) had no Forest Policy. About 97 per cent. of the 3 million acres of woodlands were privately owned and managed as their owners thought best.

3. During the last war the woodlands made an effective contribution to victory. By substituting home-grown for imported timber substantial economies in shipping were effected.

4. As the result of this experience, and after due enquiry, a Forest Policy was approved which included a programme of State Afforestation and the maintenance of existing woodlands in a productive state. The Forestry Commission was established in 1919 as the Forest Authority.

5. Owing to lack of stability of finance the Forestry Commission's operations were subjected to a number of checks. In spite of this a considerable forest estate, aggregating 714,000 acres of plantable land, has been acquired, of which 434,000 acres were under woodlands by the end of 1939.

6. The progress with private woodlands has been disappointing. Replanting since the last war has been inadequate and the general level of silviculture has not improved. Some 126,000 acres have been planted by the aid of Forestry Commission Grants.

7. Wholesale exploitation of the woodlands began again in 1939 and has continued unabated throughout the war. For the second time in little more than a generation the woodlands have been called upon to relieve the shipping position and are making a response at least as great as in the last war. The great bulk of the timber is coming from private woodlands although the new plantations made by the Forestry Commission are also making a contribution.

8. It can now be seen in retrospect that, had there been a livelier appreciation of the possibility of future wars, systematic steps would have been taken not only to augment but also to conserve the supplies of standing timber remaining after the last war. Profiting by that lesson it is proposed to continue the war-time system of licences for felling timber.

9. The post-war position will demand speedy and large-scale action. The requisites for success are available. British conditions are suitable for the rapid growth of good timber, there is sufficient land available in the existing woodlands and uncultivated rough grazings, many useful improvements have been made during the inter-war period in the technique of forestry, the Forestry Commission has acquired large-scale administrative experience of the problems and has a staff of well-trained forest officers and foresters. It is hoped also that private owners will continue to play an important part in securing the Nation's timber supplies.

10. It is necessary to envisage what area of forest Britain requires and how it should be managed. The Report proposes that the Nation should make up its mind at this stage to devote 5 million acres to the purpose. That area is required for national safety and will also provide a reasonable insurance against future stringency in world supplies. There are valuable contingent advantages associated with forests, such as the development and settlement of rural Britain.

11. The 5 million acres should be not merely planted with trees but also systematically managed and developed. This conception entails among other things the continuous application of good silviculture, the development of markets and internal transport, and the settlement of forest workers in a good environment.

12. It is estimated that 5 million acres of effective forest can be secured, as to 3 million acres by the afforestation of bare ground and as to 2 million acres from existing woodlands by selecting those woodlands which are better suited for forestry than for any other national purpose.

13. The land for afforestation would be drawn only gradually from its present use. The loss to food production would be relatively small.

14. The problem of securing the systematic management of woods in private ownership is difficult. It is proposed that the 2 million acres should so far as they are privately owned, be either dedicated by their owners to forestry or acquired by the State. Dedicated woodlands would be worked to an approved plan of operations, and in return the owners would receive State assistance equal to 25 per cent. of the net expenditure up to the time when the woodlands were self-supporting. Loans at current rates of interest would also be available.

15. As regards the remaining woodlands in private ownership (mainly small woods, shelter belts, amenity, etc.) free technical advice would be provided but no State assistance.

16. Detailed proposals are presented in Chapter VI entitled 'Policy, Programmes, and Costs'. Greater stability is required in Policy than has been hitherto attained. Stability is dependent on finance and it is requested that the Government will consider the feasibility of financing a reasonable proportion of the annual outlay through loans.

17. It is proposed that the attainment of the 5 million acres of effective forest be spread over 50 years, a period adopted now in order to get a general view of the position, but subject to amendment at the periodic reviews which, it is suggested, Parliament should make of the forest and timber supply positions.

18. Two programmes are submitted. From the point of view of national safety rapid action is of the utmost importance in the first and the second post-war decades. A 'Desirable Programme' is therefore presented which is the utmost that can be efficiently carried out in the first decade having regard to initial limiting factors, such as plant supply, numbers of trained supervisors, and so forth. This programme makes provision for planting 1,100,000 acres in the first decade and 1,500,000 acres in the second.

19. An alternative or 'Intermediate Programme' provides for planting 875,000 acres in the first decade.

20. The estimated net outlays for the first decade are: for the Desirable Programme £41·2 million; for the Intermediate Programme £32 million. The cost of developing the existing State Forests is included in each case.

21. The corresponding net outlay on the pre-war basis is estimated at £13·8 million, but the effort is so inadequate for the new situation that the subject is not further considered.

22. The administrative machinery is discussed in some detail. The five essentials for successful British Forestry are stated and emphasis laid on the importance of having a single Forest Authority for the whole of Britain. It is not necessary to alter the constitution of the Forestry Commission as the established Forest Authority, but if Parliament requires direct Ministerial responsibility that duty can best be performed by the Lord President of the Council assisted by a committee.

To meet the larger task a process of administrative devolution will be desirable, and internal changes are also proposed for the more effective administration of private woodlands.

23. Due attention is paid in the Report to Amenity and Recreational Facilities, and proposals are made for increasing the numbers of National Forest Parks.

24. Descriptions are given of various technical services, such as Forest Research and Education, and proposals are submitted. Attention is also paid to Taxation of Woodlands, Marketing of Forest Produce, and Forest Protection.

25. Measures are being taken now for the supply of nursery stock so that no time may be lost after the war. It is desirable for the same reason that the Forestry Commission should resume land acquisition on a larger scale.

26. If so desired a great deal of work can be provided on demobilisation in connection with the construction of roads in existing State Forests. Surplus plant, machinery, and hutments, should be retained for that and similar purposes.

27. Large-scale and systematic forestry is necessary for the safety and welfare of Britain and holds out prospects of a reasonable return on the capital invested in it.

Appendix II

STATEMENTS OF POLICY ON COMPULSORY ACQUISITION OF BARE LAND FOR FORESTRY

1. House of Lords—23rd February, 1955

Official Report, Vol. 191, Col. 407

[The Earl of Home, Minister of State for Scotland]

The noble and learned Earl, Lord Jowitt, I will not say pleaded for, but broached the question whether the Forestry Commission should not ask for compulsory powers to be used. It is worth remembering that under the procedure a compulsory purchase order is quite likely to run the gauntlet of a public inquiry. That is not an easy procedure to get through when the interests of food production can be pleaded on the other side. But I should like to make it clear that, if the economic and the social circumstances justify it, the Ministers are ready to use compulsory powers in any individual case. Nevertheless, I must say this: I hope that no Government will ever use compulsory powers as more than a highly selective instrument of policy. The last thing the Forestry Commission would ask would be for powers of compulsion to go and take any land they liked the look of. The noble and learned Earl rather suggested, I think, that there was not much good will towards the Forestry Commission in the countryside. I would not accept that. But I certainly would say that, if they are to be accepted at all, they must be partners in a rural community, and they must co-operate with other rural industries and interests. To override these other industries, except in a special case, might, I think, have the very opposite effect to what the noble and learned Earl and all of us want: it might easily dry up the sources of land which they are now able to acquire by agreement. I repeat that I do not 'wash out' the increased use of compulsory powers, but I hope that we shall never use them, save in the exceptional circumstances in which the economic, social, and therefore the national, interest clearly warrant it.

2. House of Lords—16th November, 1955

Official Report, Vol. 194, Col. 633

[Lord Strathclyde, Minister of State for Scotland]

The question and possibility of compulsion as a means of securing for the Commission the land they need was raised. On that subject I do not think I could do better than refer to the comments which were made by my noble friend, Lord Home, when this subject was debated in February of this year. The Government do not rule out the use of compulsion in any individual case where the economic and social circumstances justify it—in other words, where it is the only alternative to the waste of land which everyone is agreed should be used for forestry. But it is indeed our earnest wish that the Commission will not find it necessary, save in exceptional circumstances, to use compulsion for the purchase of land for afforestation. I may say that neither the Commissioners nor the Government regard compulsion as the cure to the troubles arising from a shortage of land.

Appendix III

NOTE ON NEW FOREST AND FOREST OF DEAN

New Forest

There are 92,300 acres of which nearly 65,000 acres are Crown property within the forest perambulation. Acts of Parliament authorise, *inter alia*, the inclosure by the Forestry Commission of parts of the forest for the growth of timber and constitute the Verderers as an administrative judicial body in respect of certain matters including the regulation of the exercise of the rights of Common. By an Act of 1877 the Crown was empowered to keep enclosed for the growth of timber not more than 16,000 acres at any one time of certain defined areas; over the uninclosed parts of the Forest (except the Crown freeholds of about 2,000 acres) the Commoners exercise rights of Common. The properties to which the rights are attached and the nature of such rights were defined by an Award of 1854; the principal right is that of grazing. The Commoners are very jealous of their rights and strongly opposed to anything which they regard as infringements of them; it is generally conceded, however, that the forest is under-grazed.

2. From time immemorial the public have enjoyed the privilege of wandering over the uninclosed parts of the Forest; they also have access to some of the Inclosures. Any substantial interference with this privilege would be contested very strongly by various bodies on behalf of the general public, since the New Forest is now recognised as a national heritage for public enjoyment.

3. In 1946 a Committee was appointed to 'investigate the state and condition of the New Forest and having due regard to existing rights and interests, to recommend such measures as they consider desirable and necessary for adjusting the Forest to modern requirements'. This Committee reported in 1947 (Cmd. 7245) and the New Forest Act, 1949, gave effect to certain of their recommendations. This Act authorised, subject to the consent of the Verderers, the inclosure for the growth of timber of a further 5,000 acres and of 3,000 acres for improvement of the grazing. In addition the inclosure of limited areas of what are known as the Ancient and Ornamental Woods was authorised. The powers of the Verderers were extended and their constitution amended: under these extended powers the Verderers were enabled to increase the fees paid by the Commoners in respect of each animal turned out into the Forest and also to regulate more extensively the numbers of animals which Commoners have a right to turn out. They can also authorise persons who are not Commoners to turn out animals.

4. The Verderers employ four agisters whose duty in general is to supervise the turn-out of animals, to render any assistance required (e.g. accidents to animals) and to ensure observance of the bye-laws which the Verderers are empowered to make subject to confirmation by the Minister of Agriculture. Following on the eradication scheme recently introduced the Commoners are hopeful that the Forest will eventually become a T.T. area and that the number of animals turned out will be increased.

5. The first presentment to the Verderers for consent to the inclosure, over a period of years, for the growth of timber of the 5,000 acres referred to above was made recently but refused by one vote.

6. Having regard to the exhaustive examination of the problems made in recent years and to the extent that the New Forest is enjoyed by the public it is considered that no useful purpose would be served by any amendment of present legislation.

Forest of Dean

This Forest, situate in Gloucestershire, extends to some 18,500 acres of land vested in the Minister of Agriculture but placed at the disposal of the Forestry Commission. Within the Forest boundary there is some private property, mainly in and around the villages. The Forest over-lies a coalfield and persons known as freeminers have certain rights as regards the minerals and the surface; for example tip room has to be allocated, free of charge, to a coal mine. There is vested in the Minister a power of sale; he also has powers of leasing land for purposes in connection with the minerals.

2. Although it is generally thought that sheep are not commonable in a Royal forest they have been turned out in the uninclosed areas of the Forest of Dean for very many years without action being taken by the Crown by people who claim that they have rights of common. In recent years there has been some concern because, for various reasons, the area available for grazing has decreased and the danger caused by sheep wandering on to the roads has increased. There is little or no evidence available as to the premises to which rights of common are attached and apart from the activities of a 'Commoners' Association' there is no proper regulation of the turn-out of animals.

3. Of the area at the Forestry Commission's disposal about 1,000 acres are free from commonable rights. The Commission is authorised, in accordance with the special Acts covering the Forest, to keep inclosed for the growth of timber up to 11,000 acres and, unlike the New Forest, this power is a roving one to the extent that when the trees are beyond damage from browsing inclosures may be thrown open to the Commoners' cattle and an equivalent area in any part of the Forest may be inclosed subject to proceeding in accordance with the Statutes.

4. In view of the changed position brought about, at least partly, by modern conditions a Committee has been appointed with the following terms of reference:—

'To review the situation in the Forest of Dean and, having regard to all existing rights and interests, to recommend such measures as they consider desirable and necessary to secure that the administration of the Forest, more particularly as regards the grazing of animals, may be adjusted to modern requirements.' It is hoped that the report of the Committee will be presented this year.

5. This note covers the Forest of Dean proper and does not include the freehold and leasehold areas at the disposal of the Forestry Commission which either adjoin or are in the vicinity of the Forest proper.

Appendix IV

NATIONAL FOREST PARKS

In acquiring land for afforestation the Forestry Commissioners have been obliged to take over large areas of unplantable land, mainly mountain tops too high or too exposed for tree planting. Much of this land is of high scenic value, and to meet the demand for public access to such areas the Commissioners have created National Forest Parks.

The New Forest, Hampshire, while not designated a National Forest Park, was the prototype of such Parks, and provides access to some 65,000 acres of heath for the enjoyment of the public. Proximity to London makes the New Forest a very popular resort for day visitors as well as for campers.

Excluding the New Forest the Commissioners have to date designated as National Forest Parks eight areas, amounting to some 428,000 acres of woodland and mountain. The first of these, the Argyll Forest Park was formed in 1936 and others have followed at intervals since; a list of the Forest Parks in the order of their formation is as follows:

<i>Name</i>	<i>Situation</i>	<i>Area in acres</i>
Argyll ...	Cowal Peninsula of Argyll ...	58,000
Snowdonia ...	Caernarvonshire ...	22,500
Forest of Dean ...	Gloucestershire, Herefordshire and Monmouth ...	33,500
Hardknott ...	Lake District, Cumberland and Lancashire ...	7,000
Glen Trool ...	Galloway, Ayrshire and Kirkcudbrightshire ...	130,000
Glen More ...	Cairngorm Mountains, Inverness-shire ...	12,500
Queen Elizabeth	Ben Lomond, Loch Ard and The Trossachs; Perthshire and Stirlingshire ...	41,500
Border ...	Northumberland, Cumberland and Roxburghshire ...	123,000
		428,000

Powers to regulate the admission of visitors to the Forest Parks are provided by the Forestry Act, 1927, and for most of the Parks a short series of bye-laws has been enacted. These permit of the freest possible access consistent with the protection of the plantations, particularly from fire, and encouraged by the fine summer of 1955 visitors have made use of the camping facilities provided at most of the areas in greater numbers than ever before.

Guides have been published for the New Forest and for each of the Forest Parks mentioned above, except for the Border Forest Park which was designated only as recently as September, 1955.

The Parks are extensively used by the public but the number of visitors cannot be given even approximately since the public are free to come and go as they wish, no check being possible. The following figures indicate the use made of the camping grounds provided and of the local Youth Hostels.

Year ended 30th September, 1955

<i>Park</i>		
New Forest	...	92,000 overnight stays by campers.
Argyll	...	Campers, 27,000 person/nights. Hostels, 17,000 person/nights.
Snowdonia	...	Campers, 16,700 person/nights. Hostels, 35,900 person/nights.
Forest of Dean	...	Campers, 4,300 person/nights. Hostels, 14,000 person/nights.
Hardknott	...	No camping sites. Visitors to local Hostels 1,200.
Glen Trool	...	Campers, 4,900 person/nights.
Glen More	...	Campers, 14,000 person/nights. Huts and Lodge, 20,000 person/nights.

Examination of Witnesses

SIR ARTHUR GOSLING, K.B.E., C.B., SIR HENRY BERESFORD PEIRSE, BT., MR. H. A. TURNER, MR. E. WYNNE JONES, C. de G. (B), and MR. E. S. J. HINDS, O.B.E., on behalf of the Forestry Commission.

Called and Examined.

902. *Chairman:* Gentlemen, we are most grateful to you for having given us your memorandum, and for agreeing to come along to give evidence. May I first mention that my procedure is normally to go through the memorandum, asking questions on the particular points which occur to me from reading the memorandum, taking it paragraph by paragraph, and then other members may have their own questions on those paragraphs or may have supplementary questions arising out of my questions, so that we rather jump around from person to person quite often. May I first of all ask a couple of questions, for the sake of the record. I have looked at the Forestry Commissioners' statutory authority, and I think that they have the general duty of promoting the interests

of forestry, development of afforestation and the production and supply of timber. Is that right?—*Sir Arthur Gosling:* Yes, that is so, in general terms.

903. And then, glancing rather generally at the statutes, I came to the conclusion that you undertook this duty in two ways, first by developing and managing forests on land vested in the Minister of Agriculture, and secondly assisting private persons in the development and management of forests—is that a fair summary?—That is so.

904. And thirdly, you work under the general direction of the Minister of Agriculture?—In so far as England and Wales are concerned, and the Secretary of State for Scotland in so far as Scotland is concerned.

905. Our terms of reference are limited to England and Wales.—On matters of general policy the Ministers act jointly.

906. Then there are two general questions: you mention in the course of the memorandum some of the various competing interests for the use of land. I have actually made out a list of ten of them, including the Forestry Commission, but I wonder if you would agree with the principle which has been stated to us by several of the witnesses, that the paramount interest is the national interest, that in fact these several interests, including your own, are simply aspects of the national interest, and that the task of the Royal Commission is to consider how the law can provide for the sorting out of these various interests in each particular case, so that the best possible use is made of each piece of land—I think that is a fair summary?—Yes, that is a fair statement.

907. Then I wonder if you could tell us in rather more detail than you have done in the memorandum how far the practice of forestry is consistent with the maintenance of the interests of the lord of the manor, the commoners and the public?—As far as the lord of the manor is concerned, his interest as owner of the soil would not be prejudiced in any way, and he could easily be compensated if the land was acquired for planting. As far as the commoners are concerned, there is bound to be some change; if the commoners have grazing rights, the grazing rights cannot continue while the land is under trees. But as far as the general public is concerned, their interest in the way of access is very much less interfered with. There is bound to be a temporary limitation of their access during the initial stages of establishment of the forest, but, taking the long term, our view is that the public would have almost as much access as they have today, and in many cases more than they have today in fact, because access would be more easy.

908. Yes, that is access only, but if they want a common for air and exercise or recreation, or something of that kind, that presumably is interfered with by forestry?—If one looks at a common today and compares it with what the situation would be if forestry had been developed, I think we would hold that the right of exercise would not be interfered with, the ability to use it for

recreation purposes in general would also be adequately safeguarded.

909. Does that depend on the sort of forest which is put on the common?—It depends on how the forest is developed, that is true. But we provide in our forests parks for the various sorts of exercise and recreation which we think are what the public really want.

910. You mean open spaces within the forest?—Facilities for camping within the forest, and so on.

911. *Sir George Pepler*: What about the Eskdale case, where you were going to give them a space, but the Friends of the Lake District objected to conifers being planted?—Yes, that was, shall I say, an amenity objection.

912. *Mr. Evans*: Would it be the policy wherever possible to plant hardwoods where the soil is suitable?—Where the soil is suitable we do plant hardwoods, but it would not be reasonable to expect that a large proportion of the upland commons, which are the sort of commons which we think are generally more suitable for forestry than for other purposes, would be suitable for large scale hardwood planting.

913. *Professor Stamp*: I believe there have been certain changes in technical methods which have developed gradually over the last few years; would it be true to say that you are now more in favour of mixed planting than pure stands?—If you mean by mixed planting an intimate mixture of species, I do not think there has been much change. There has been a lot of change in the techniques of afforestation, which have made it practicable for us to afforest land which twenty years ago we could not have done successfully. We do mix trees, we mix conifers, and we mix conifers and hardwoods; if we are trying to grow hardwoods, we often use conifers in mixture with them in order to bring them on and in order to make them financially more attractive. Then again I should say that no large area is ever planted with one species. There are different species in it, but they are more frequently in pure groups and pure blocks within the forest than very intimately mixed.

914. I ask that question because the objection from the amenity angle has, up to date been particularly against rectangular blocks of one species only.

I am right in thinking the tendency is in general away from one species only?—Certainly.

915. And I think I am right in saying that you do tend now more to follow natural contours and to vary the shapes of your blocks?—I would say that the tendency is very strongly away from rectangular blocks, we avoid that wherever we can.

916. *Dr. Hoskins*: Is the tendency also away from planting in straight lines within the area?—I doubt if the lines were ever as straight as they were said to be. But it is necessary to plant them reasonably straight. You mentioned the development of new techniques; one of those techniques is ploughing the land before it is planted, and, of course, if you plough furrows you are bound to plant them fairly straight. They are not mathematically in a straight line, but they are in a continuous line. I would say very strongly that the effect of those lines disappears early in the age of a plantation.

917. Could not that, in fact, be hidden by planting at the edges, so as to conceal from any roads the regularity of what lies behind?—Yes, that is so. One difficulty is when you have a steep hillside which you are looking into, but on ground which is not of that nature the straightness of the line is very easily hidden.

918. Do you in fact do that?—We devote a lot of time to trying to make things look attractive from the roadsides now.

919. *Professor Stamp*: I think we should agree that the appearance of straight lines does tend to disappear quite quickly, but admittedly if one is undertaking a reasonable spacing it is awfully difficult to avoid lines in some direction or another. But probably the line which is most conspicuous is that of the firebreak. What is your policy there?—We must have firebreaks, there is not any doubt about that, and occasionally they can be conspicuous, but again as the plantation grows up the necessity for this firebreak either disappears or it becomes much more hidden.

920. Am I not right in thinking that the firebreak can, and often does, serve the other purpose, that is to say, a lane for the extraction of timber, and that

for that reason it is better if it follows a contour and has a gentle gradient?

—If we were in a position always to put roads where we wanted them at the early stages of planting a plantation, we should want less firebreaks than we do, and they would be less conspicuous and become much more quickly hidden, but sometimes firebreaks are required on the edges of plantations.

Chairman: I am coming to questions of amenity presently, because they arise out of your memorandum. May we take the memorandum now and first of all paragraph 1, particularly the quotation of paragraphs 10 and 11 of the Summary of the Report on Post-War Forest Policy, where we get the first reference to the plan for five million acres.

921. *Professor Stamp*: Could I clear up one point first? The Forestry Commission was established in 1919, was it not?—Yes.

922. Am I right in thinking that the Report on Post-War Forest Policy has superseded the arrangements which existed from 1919 onwards?—The Report was prepared by the Forestry Commission and submitted to the Government and was followed by an Act passed in 1945, which altered the status of the Forestry Commission, making it subject to the direction of Ministers. The Act transferred the title of land from the Forestry Commission to the Ministers, and made various other changes of that nature.

923. So we can take the White Paper of 1943 as the basis on which you work now?—As far as the programme is concerned, that is so, but certain recommendations made in the White Paper were not adopted in the actual legislation of 1945.

924. *Chairman*: The question I was going to ask was whether the plan for 5 million acres was based upon the economic needs of the country or whether you did, in fact, take into consideration the other legitimate claims for the use of the land?—It was generally calculated that if roughly 5 million acres was established the country would be producing approximately one-third of its timber requirements.

925. *Professor Stamp*: That is England and Wales, and Scotland, is it not?—Yes.

926. Can we split for our purposes the 5 million acres between England and Wales and Scotland?—We have never split that ourselves. That was regarded as an aim for the country as a whole.

927. So we are not really in a position to know what proportion of that affects our position in England and Wales?—At the present moment something between 40 per cent. and 50 per cent. of our planting it is being done in Scotland.

928. Very roughly then perhaps half in England and Wales?—Yes, I should say rather more than half in England and Wales; that is how it has been working out in practice.

929. *Chairman*: Then in paragraph 12 of the Summary of the Report those five million acres are divided into three million acres from the afforestation of bare ground and two million acres from existing woodlands, but it does not tell us how much of the five million acres you think has to be acquired by the State for the purpose of afforestation.—From the country's point of view, if the work is done it can be done by either party. We did make an estimate as to how much was likely to be done by private owners; broadly speaking it was assumed that private owners would be responsible for a substantial part of the existing woodlands, and that the bulk of the work of afforestation of bare land would be carried out by the State. That was the assumption which was made when the Report was prepared, and that is in effect how it is working out.

930. Yes, that was the question I was next going to ask, that you contemplated that very few private owners would in fact afforest bare land?—That is so. In fact some private owners do afforest bare land, but in total the amount is not very great.

931. The common lands I take it would come into both of these categories, would they not? There are commons on which there are forests already?—There are commons on which there are trees growing but I do not think there is any doubt that the bulk of the commons would be regarded as bare land.

932. I was wondering if you could give us any idea of the area of common land which has already got some sort of timber on it?—I am afraid we are not

in a position to do that. We have not carried out a survey of commons. But it is not very significant in total.

933. Even when you take places like the New Forest and the Forest of Dean?—Yes, but they are not in private ownership, of course.

934. I was thinking in terms of the commoners having rights on these lands?—Commoners have very restricted rights as far as the actual enclosures are concerned. Is not the main point of importance that the owner of trees on a common is not in a position to manage them, and what we are aiming for is two million acres of existing woodlands which are managed effectively?

935. He can cut down, can he not, but he cannot plant?—He can cut down, but that is not managing the woodlands effectively. He cannot plant.

936. Then in paragraph 2 of your memorandum you mention some figures, in particular the figure of 65,000 acres a year. I am not quite clear whether the whole of this 65,000 acres has to be acquired by the Forestry Commission for the purposes of afforestation?—The provision was for plantings by the Commission of half a million acres of bare land at a rate which rose by the seventh year to 65,000 acres a year.

937. Planting by the Commission would be on land which was acquired by the Ministry?—Yes, that is so.

938. *Mr. Floyd*: Or leased?—Or leased.—*Sir Henry Beresford Peirse*: It is not the Ministry, it is the Minister—there is a distinction.

939. *Chairman*: Have you in fact acquired any common land under this arrangement?—*Sir Arthur Gosling*: No.

940. Then in paragraph 3, where you state that the ultimate objective is still five million acres, is that really a genuine objective, or is it merely an ambition?—It is a very genuine objective.

941. There is a reasonable chance of attaining it, is there?—We believe so. It was to be done over a period of fifty years. We have to think in long terms, and we still believe that the five million acres in fifty years is a reasonable objective.

942. Considering the development of other interests and other demands for the use of land?—We still think so.

943. *Professor Stamp*: Can you separate the 3,400,000 acres which you quote as the total forest area, between Scotland and England and Wales?—I am sorry, I am not in a position to do it here, but I could let you have that figure.

944. I am sorry, I need not have asked that question, because I now find that the Forestry Commission in their 1947 census did split that 3·4 million acres, and there was 1·865 in England and ·32 in Wales, so there is a good deal more than half in England and Wales?—That is so.

945. *Chairman*: There are a number of figures here, but may I take it that the figure of 1,320,000 acres which has been planted or is awaiting planting is all vested in the Minister?—Yes, all that land is vested in the Minister.

946. Could you also explain why your Commission has to have a reserve of plantable land?—If you acquire an area, shall we say, of 1,000 acres, and you propose to plant it up, it is reasonable to plant it, say, at the rate of 100 acres a year. So at the beginning of the period you have got 1,000 acres reserved, at the end of the first year you have still got 900 acres reserved—you cannot carry on a programme of that magnitude without having behind you a reserve of land.

947. But it is not that you want separate bits of land?—No, we want in total a substantial reserve, otherwise it is quite impracticable to carry on a consistent programme.

948. *Mr. Floyd*: Would it be true to say that if the Commission did plant up to 1,000 acres in one block in a year, all the amenity people would immediately start complaining, and that it is the reserve which enables them to differentiate in height and species and general appearance?—Yes, and of course the problem of employment would become impossible.

949. *Chairman*: Paragraph 4 of your memorandum gives the impression, which I think cannot be correct, that in considering whether to agree that land should be acquired the officers of the relevant Department—which in your case would be the Ministry of Agriculture—consider only the suitability of the land for food production; presumably they do

take other factors into consideration, do they not?—Not the Ministry of Agriculture. The Ministry's function here would be to consider the food production aspects of it. We on the other hand consult with a great many other Departments as well, and every possible interest is taken into account.

950. Then who makes allowance for amenity, and so on?—We consult with the National Parks Commission, the Ministry of Housing and Local Government, and so on, and any point which they may make is taken fully into account. There is a procedure under which every proposal to acquire that we are considering, is submitted to every Department which has an interest.

951. But presumably if it were common land the Ministry of Agriculture would have to take the amenity problem into consideration?—Yes, they have special responsibilities in connection with common land, with which I am sure you are more familiar than I am.

952. In the case of common land it is not only the question of food production, there would be other questions?—Yes.

953. *Professor Stamp*: I think probably you have not been quite fair to yourself in the statement made in paragraph 4 which reads: 'Before any bare land is acquired an assessment is made by officers of the relevant Department of its actual or potential food production'. If you consult other Departments, that means then that you consider other matters than food production?—Undoubtedly. I think the 'relevant Department' there would have meant in England the Ministry of Agriculture and in Scotland the Department of Agriculture for Scotland.

954. 'This ensures that land is only used for afforestation by the Commission if it is considered to be better so used than for food production'—and for other purposes?—I agree that it would have been clearer if we had added another sentence to the effect that every other Department was consulted in respect of their own interest.

955. *Sir George Pepler*: Am I right in thinking that you have a friendly working arrangement with the Council for the Preservation of Rural England?—A very friendly arrangement.

956. *Chairman*: On paragraph 5 I think I ought to put to you the point which was made to us by the Commons, Open Spaces and Footpaths Preservation Society, that all common land ought to remain as such because of the pressing need for areas of land which would be open to a rapidly growing population. What is your view about that? I know we are coming to common land presently, but I thought that point ought to be put rather early in the discussion. —Our view, Sir, is that there is a large area of common land which is not in fact used effectively, by the public or by anyone else.

957. *Mr. Evans*: That is, in its present condition?—Yes, and so far as one can see there is little prospect under present circumstances of its being so used.

958. *Mrs. Paton*: Have you any idea of how much common land could not be used for any other purpose than for forestry?—We have made a very tentative suggestion here, which we have said is not anything more than an estimate, that a total of something like 400,000 acres could be used for forestry without prejudice to the needs for food production or the needs of the urban population for open spaces. But, as I said before, we have not carried out a survey of commons, and that figure is very much of an estimate.

959. *Chairman*: I have no questions on paragraph 6. On paragraph 7, is the effect that you can rarely get land by compulsory acquisition, in other words that you have to get the whole of your 3 million acres only by persuading owners to sell?—The Forestry Commission is not anxious to use the compulsory powers which it does possess or which the Minister possesses, but I do not think I can add much to the statement which was made by Ministers in the House, a copy of which was attached to our memorandum. This clearly outlines the policy with regard to the use of compulsory powers.

960. *Professor Stamp*: In that connection could I ask if you are still under a statutory limitation as to the price which you can pay for land? I think there was a ceiling, was there not?—There has never been a statutory limitation to the price we can pay for land.

961. But you have observed a ceiling price, have you not?—No, that is not

so.—*Mr. Turner*: Only in the sense that we pay the market price.

962. *Professor Alun Roberts*: Is it not true to say that the Forestry Commission was in the happy position of being able to dictate a price in the years of depression between the two wars, and that you have not been too liberal in advancing the prices?—*Sir Arthur Gosling*: I should have said the Forestry Commission does not dictate anything. The general principle is that we should pay the market value, the value which the land would fetch as between a willing buyer and a willing seller in the open market.

963. But my point was that the situation in the inter-war depression years was such that the Forestry Commission, it can properly be said, was the only redeeming agent in the market for such land. You have however not been too liberal in advancing your scale of prices in face of competition which arose after the last war, is that not so, Sir Arthur?—As to whether we have been liberal or not, I think my reply must be that we have done our best to assess the market value.

964. *Chairman*: And presumably you have pushed up the market value in many cases, have you not, if you are in the market for three million acres?—We are in the market, but as I say our business is to acquire what we can at a price which would be a fair one as between a willing buyer and a willing seller.

965. But has not the effect been to push the price up gradually, because there are so many other demands for land now?—I think the price of land has gone up, but the price of the relatively poor type of land which we are acquiring, has not changed in anything like the same degree as the price of good arable farm land over the years, it has remained much more stable.

966. *Mr. Evans*: On this point, would it be right to say that you could acquire considerably more land were the terms offered rather more attractive—that is, private land of this kind?—That is very doubtful. We have looked at that many times in discussions among ourselves, and we are unconvinced that our rate of acquisition has been held up substantially because of the prices which we offer.—*Sir Henry Beresford Peirse*: Could I correct one thing, Sir? You said

we were in the market for three million acres; three million acres was the area that we originally needed to afforest, but we are a long way towards that and we are not in the market for more than half that amount now.

967. *Professor Stamp*: Has any considerable tract of land been handed to the Forestry Commission by the Treasury which has been received in lieu of death duties?—*Sir Arthur Gosling*: A number of transactions have taken place through the Land Fund in that way.

968. *Mr. Floyd*: Would it be fair to say that in view of the changed value of money, relatively speaking the prices paid today are not, in fact, higher than those during the depression? They are more in money terms, but I do not think it is quite fair to say that the Forestry Commission made use of the depression between the wars to buy at a knock-out price. In fact today, despite the competition for land, if you take into account the changed value of money you are not really paying much more now than you were in 1930.—I think if you take into account the value of money, that is absolutely true.

969. *Chairman*: Now we come to Section III, which deals with common land, and paragraph 8 first of all; you say that the estimate of 800,000 acres was made on the basis of reports from field officers. Was there anything like a survey made to find out what common land was available?—No.

970. This is just a casual view formed after going round the country?—It is an estimate based on our officers' general knowledge of the areas of which they are in charge.

971. *Professor Stamp*: I take it that the 800,000 acres is entirely in England and Wales, in view of the absence of common land in Scotland?—That is so.

972. I wonder whether it would be possible for the Forestry Commission to let us have any schedules they have from which that figure was derived? Could we have some idea of the areas of land which they were considering?—We could give it you by conservancies. We have five conservancies in England and two in Wales.

973. I was thinking, in just the same way as the Ministry of Agriculture has

given us a schedule of common land in which they were interested one way or another for war-time use, you might have something of the same sort from which this total was derived.—No, I think our circumstances are very different. We have not got any particular knowledge of these commons. But in the course of their work looking for land to plant and so on, our officers acquire a considerable knowledge of the extent of commons and it is on this general knowledge that the estimate was based. I will gladly give you the figure broken down into the seven conservancies. It would give you an idea of where the land is situated, but we could not give you any more detail than that.

974. *Mr. Arnold-Baker*: Would you regard the information you have as something on which a prudent body of people could reasonably rely?—It is an estimate, and without a special survey I do not know how to make a better one. It is the best one that we could make in the circumstances. I am sure it is not wildly wrong, but it might well turn out not to be very accurate.

975. It is the best you could do without having to spend an enormous amount of time and money and trouble in going down to the last acre or 100 acres?—Yes, I think it would be a fair working figure.

976. *Chairman*: Is it broken down into commons?—No. It is a total for each conservancy.

977. I think we should like to have that, if you could let us have it.—Certainly.

978. *Sir George Pepler*: That I take it would indicate the counties?—Yes, and we will show the conservancy boundaries as well.

979. *Chairman*: There have been suggestions made to us for the registration of all common rights. Would that help you? Would you approve of that?—I should have thought that would be a very necessary and helpful step.

980. There was registration of some sort in the New Forest, was there not?—Yes, there is a complete register of everyone who has a common right in the New Forest.

981. Have you found any trouble with the register?—The register has only been compiled since the passing of the 1949 New Forest Act.

982. Was there not one under the 1854 Act?—There was one, but it has been revised, and the land to which common rights are attached is also now defined on an atlas and the thing has been brought on to a very much clearer and straight-forward basis.

983. And that form of register has been found useful, has it?—Most definitely. It is quite essential in the New Forest because of the procedure for the election of verderers, and so on.

984. Then we come to paragraph 9, where you use the phrase 'better employed': 'In the lowland areas especially much of it would be better employed if it were improved and used for agriculture than if it were put under trees'. By that you mean more economically employed, I take it?—I think perhaps we could put it this way, that if the land was not common it would be regarded as too good for afforestation.

985. On this figure of 400,000 acres, which we understand to be between one-fifth and one-quarter of all the common land in England and Wales—possibly one-quarter, but maybe only one-fifth—do you think that all that could be acquired without prejudice to the need for open spaces?—It was very difficult for us to put a figure to it, but we thought we ought to do our best to do so. Our general feeling was that about one-half of what we thought would be afforestable, might be made available. But I would say that that is an expression of opinion as to what it might work out at, and we have not got data to support it.

986. Are you thinking here only in your own terms, and not of the problem of amenity at all?—We were thinking of both; we say 'could be used for forestry without prejudice to the need for food production or the need of the urban public for open spaces'.

987. *Mrs. Paton*: Is that not a matter of opinion?—Very much a matter of opinion.—*Mr. Turner*: What we had in mind was not that if we had a common we would want to put trees over every acre of it; what we had more in mind was that of any one common possibly only half would be suitable for trees. We would take the line that if you have 1,000 acres of common land—leaving aside for the moment that an awful lot

of the common land is physically impenetrable—500 acres of it would be left open either for grazing or recreation, and 500 acres would be under trees, possibly in small blocks, which would only be closed to the public for perhaps 20 years and thereafter could be walked over. Possibly even for the first 20 years that area could be driven or walked through along the rides. There would not be much interference with the general public's right to wander—an apparent interference, but not a real one. We do not have in mind taking 1,000 acres and planting one great block of conifers from one end to the other, putting a fence round and saying: 'Keep out for ever'.

988. *Professor Stamp*: Could I clear up two points on that? You referred to planting in small blocks; I think there is a lower limit, is there not, to the manageable size of a block? Is the Forestry Commission interested actually in small areas? Could you give us a figure as to the minimum size of area and the minimum size of block?—*Sir Arthur Gosling*: It is very difficult to speak other than in general terms on this sort of thing, because so much depends upon the type of ground, the situation in which it is relative to other properties which we own, and so on. Again, a lot depends on accessibility. It is obviously not a sensible proposition to enclose a small area miles away from a road, where the expense of getting access to it would rule it out of the question. On the other hand, if it is a small area quite close to or adjoining one of our own places it becomes quite a different matter.

989. *Mr. Evans*: Would I be right in thinking the Forestry Commission would be more interested in the larger tracts of land than they would be in what one might call the smaller amenity commons?—Yes, we are very much interested in the larger areas.

990. *Professor Stamp*: I do not want to press you for a figure, but by small blocks, do you mean five acres or fifty?—Certainly not five although it would be fair to say we have acquired numerous small blocks, of five acres and less. They are not, shall we say, situated out in the blue on a common. We have acquired many areas in Wales which are of five acres, but often they are adjoining one another and all make up a big one. But it would be misleading to this Commission if we gave the impression

that we were willing to go to any common and plant five acres anywhere on it. We should want to have something more than that to get a scheme going. If it was close to or adjoining one of our own places then a smaller area would be practicable. We have got a great many places all over the country now, so it is much easier to get a place which is close to one of them.

991. *Mr. Floyd*: Would not the rabbit question have a great bearing on the practicable acreage?—The amount of fencing to be done does have a great bearing on it—fencing and access, those are the two main influences.

992. *Mr. Evans*: But in any event you would have to fence against the public, whether there are rabbits there or not?—That would probably be necessary in most cases, but not invariably. The public in fact do not go anywhere near quite a lot of the forests.—*Sir Henry Beresford Peirse*: And we are planting now without any sort of fence at all against the public, stock or rabbits, so it is not at all correct to say that there must be a fence wherever there is planting.

993. *Chairman*: Would you explain to those of us who are quite ignorant about this, why you need fencing? What is the purpose of the fence?—If there are rabbits, you have got to keep them out of the plantations; if there are stock, either sheep or cattle, using the adjoining land you have to keep them out also. They would destroy the young trees, and—this would apply in a great many of the upland commons—there may be deer, which would certainly damage the young plantations, and plantations of some age too. They have to be fenced against deer.

994. Is that still true in England?—Yes.

995. *Mrs. Paton*: But that is only for a temporary period, is it not? You do not need permanent fencing, do you?—In some cases we do think in terms of permanent fencing, because a forest is not a thing that is planted, grows and is cut down; what one hopes to get are trees in all stages, some mature, some smaller, some quite young. At the young stage they are most vulnerable to animals browsing or rubbing them. Therefore it may be that when you get a forest in

this uneven stage you need a fence to keep out the stock all through its career.—*Mr. Turner*: One would need a fence of some kind, not necessarily put up by the Commission, in any forest where there is stock on the adjoining land, or the farmer would lose his sheep: they would go for ever if they got into the forest.

996. *Professor Stamp*: That last answer I find extremely interesting—does it mean that the Forestry Commission is aiming eventually at natural regeneration and selective felling, and not of clear felling in blocks?—*Sir Henry Beresford Peirse*: Certainly not of clear felling in large blocks. Whether you get the next crop of trees by natural regeneration or artificial means is not really very important. The important point is the irregularity and the variety that you want to achieve in your whole stretch of forest, irregularity of age and size and species, of hardwoods and conifers.

997. I do think that is very important, because from the point of view of public amenity so much of the opposition would disappear if you had selective felling and the woodland was always growing at different stages. Is it not so?—We believe it is, not only from the point of view of amenity and use by the public, but also in the best interest of the forest itself, the fertility of the soil, and so on, which is something which has to be kept in mind, taking the long view.

998. But that would then mean that you would always have young trees in varying stages of growth, and that would mean permanent fencing, would it not?—Yes, if there was the risk of stock getting in, but again that does not necessarily always mean that the young trees cannot be brought up without fencing. It depends what the conditions are on the land adjoining the forest.

999. *Mr. Evans*: So the last part of paragraph 10 is not strictly accurate in all cases, 'Thus it would not be practicable to afforest common land without first inclosing it'?—*Sir Arthur Godling*: That paragraph is pretty true as far as common land is concerned.—*Mr. Turner*: There would be very few cases where there was no adjoining stock.

1000. In the same paragraph you say: '... for at least fifteen to twenty years, and to limit access by the public during

that period because of the extreme danger of fire and other damage—that would go on for ever, would it not?—*Sir Arthur Gosling*: The danger from fire is much the greatest when you have an even crop of young trees, before they have been first thinned. When you are starting off a forestry scheme you are bound to have a large area like that, and it is in that period that we have to exercise some control over the amount of access to the public. It is not a very long period in time.

1001. *Dr. Hoskins*: You say it is not a very long period—it is at least 15 to 20 years.—That is not a very long period when we are talking about forests.

1002. Not in the life of the forest, but it is in terms of human life. Most of us are only vigorously walking for about 20 years; we do our serious walking from, say, the age of 20 to 40. Would you not say it is a very big period in human life to shut out people in certain areas from this kind of activity, though in the life of the forest it may be very small?—I would say there must be some element of restriction, but I think the restriction which is envisaged and which in fact is practised by the Forestry Commission itself is not as great as perhaps you think. It is not all through the year.—*Sir Henry Beresford Peirse*: No, it can be restricted to a limited period when the fire danger is acute. In some forests the fire danger lasts for most of the year but in other cases it is quite a short period of the year, and it is in those times that it would be necessary in certain circumstances to restrict the access of the public.

1003. *Chairman*: You mean that the forest would be fenced, but that gates would be open at certain times of the year for people to walk through?—Or, put it the other way, they would only be shut at a fairly limited period of the year.

1004. On paragraph 10, we come up against the problem which this Commission has had from the beginning—you use the word 'inclose', but you do not really mean inclose in the technical sense. You mean fence, do you not? We are distinguishing between enclosure and inclosure.—What we meant there quite clearly was that a fence would have to be put around it, not inclosure.

1005. *Mr. Arnold-Baker*: Does the Forestry Commission suffer much damage from the public who have access to your plantations?—No. Our relations with the general public are usually very happy. Occasionally there are difficulties, but on the whole people are beginning to appreciate very much more than they used to what a forest is for.—*Mr. Turner*: One gets perhaps a false impression, because a very small act of damage, a casual act, can mean an enormous amount of loss. We suffer in the sense that if only one man throws his cigarette end away, 500 acres might get burnt—we do not have 500 men each doing damage to one acre.

1006. *Mr. Floyd*: Do you have wardens?—*Sir Arthur Gosling*: We have what we call fire patrols during the fire danger season, but we have wardens only in the national forest parks where there is camping and that sort of thing to control as well.

1007. *Professor Stamp*: You do not really have a problem of vandalism pure and simple?—We of course get examples of that occasionally, but by and large it is not a major problem.

1008. And the demand for Christmas trees, is that a major problem?—That is always a problem which attracts the Press.

1009. *Mr. Floyd*: Would it be fair to say that you suffer more on the whole from railways than you do from picnickers?—Far more so, as far as fire damage is concerned.

1010. *Mrs. Paton*: Am I right in thinking that in your view more land given over to forestry would actually mean more amenity to the public?—That is so.—*Sir Henry Beresford Peirse*: Could I elaborate that a little? So many of these commons are perhaps commons with bracken several feet high, and covered with scrub. Theoretically they are places where the public can go; in practice they are not. If a common like that is planted, and particularly if it is laid out with the idea that access and use by the public may be encouraged, there would be broad rides left and parking places arranged at the sides of roads. These rides which are left could be kept reasonably bare and clear, partly for fire protection, partly for access to the forest for getting timber out and carrying on general planting, and also as places which the public could use to get

through. It is in that respect that the access by the public to that land is actually increased, more than in its present state of complete jungle.

1011. *Professor Stamp*: And you have to improve drainage, do you not, so that helps access?—Yes.

1012. *Chairman*: Paragraph 11. Are you using inclosure in the technical sense here, or merely meaning a fence?—*Sir Arthur Gosling*: I think that would be in the technical sense.

1013. I do not follow then the use of the term 'inclosure otherwise than by statute', because surely all inclosure must be by statute?—*Mr. Turner*: I think probably the explanation is that the word is used technically in the first line and generally in the second line. The first line is in the technical sense; the second line is the position which arises if you ignore the law and put a fence round and see what happens.

1014. You cannot in fact put a fence round a common, legally, without the Minister of Agriculture's consent.—I am thinking of cases where it is not known whether there are common rights or not. We have sometimes been told: 'This is called a common, but it is not'. We had a case in the Midlands of land which was called a common, but which indisputably was not. We did in fact after a great deal of trouble decide to hand it back, and it is now being acquired by the County Council. It was that sort of case which we had in mind.

1015. Then about half way down that paragraph you qualify your statement by saying 'in modern times'. How was it ever possible for private persons to afforest common land?—I think our history may have been poor there, Sir, but we had the feeling that in the past commons had been inclosed by action which would not bear scrutiny.

(*The proceedings were adjourned for a short time.*)

1016. *Chairman*: May we come now to paragraph 12, where there is a reference to a compulsory purchase order. I have looked at the legislation referring to compulsory purchase orders and I would have thought there was hardly any procedure simpler than a compulsory purchase order, when everybody is agreed, under the Forestry Act. In some cases where commons are concerned, I think I am right in saying parliamentary

legislation is needed on a provisional order, or at least a special parliamentary procedure. Am I not right in thinking that in your case, provided everybody is agreed, it is merely a compulsory purchase order by the Minister?—*Sir Arthur Gosling*: That is so, provided there is no special parliamentary procedure.

1017. Does it matter then, if you have to get a compulsory purchase order in that case?—Not if everybody is agreed, but the difficulty is to make certain one has identified every right holder.

1018. You do not have to do that, do you, if the Minister has agreed to compulsory acquisition?—The difficulty is that it might not then be unopposed.

1019. But the procedure is not difficult unless some person objects?—Unless some person objects, the procedure is fairly simple, but no compulsory purchase procedure is really very simple or very rapid.

1020. What is the difficulty about it? I do not think we have had any case before of compulsory purchase orders which did not have to go to Parliament.—*Mr. Turner*: I think it would be fair to say that in any case you might not get an agreement from all the right holders; there is always the possibility of objection by somebody, and then of course the procedure does become complicated.

1021. Does it then have to go to Parliament for provisional order in your case, not special parliamentary procedure?—Special parliamentary procedure, since the Forestry Act, 1951, which is mainly about felling licences, but has tucked away in the back a reference to the special parliamentary procedure. It is Section 20 of the Act.

1022. That makes it slightly simpler for you, even when you have an objection?—Yes, it does.

1023. And where you do not have an objection the procedure must be quite simple and not expensive?—Certainly, Sir.

1024. But the case to which you refer in paragraph 12 is one in which the owners and all known commoners are agreed?—Yes.

1025. Is the procedure dilatory or something of that sort?—*Sir Arthur Gosling*: No, this situation has not long

arisen and it is for the Minister to decide whether he is prepared to proceed to compulsory purchase order.

1026. You have not actually purchased any common land, as you said just now?—No, there is only one case in which we have got to this point.

1027. A local inquiry is held and then, if there is no objection which is maintained at the local inquiry, the acquisition goes forward?—Yes.

1028. Then in paragraph 13, I am again confused about this word 'inclosure', whether it is inclosure in the legal sense, or enclosure. Do you mean a simple procedure for fencing a common, or for inclosing a common?—This, I think, should be taken as the procedure for inclosing in the technical sense. We were dealing also with the private owners' position as well as the Forestry Commission's position.

1029. So you are suggesting the owner of the soil should be able to buy out the other owners and inclose the land, if a majority agree?—That is so.

1030. That will mean compensation. You are not thinking in terms of partition, as in most of the old inclosure awards?—No. Quite frankly, we have not gone into so much detail; it was the general principle of the thing which we were confining ourselves to. It should be possible, if there was some easy procedure by which the majority of the commoners could be found to be agreeable, for the lord either to do the work himself or sell the land to us to do it.

1031. In fact your procedure would be quite simple because you would use the compulsory purchase order?—Yes, where everyone is agreed.

1032. *Sir George Pepler*: It says in the memorandum, the majority.—Yes. What we are suggesting is that it is not enough to be able to do the work only if everybody is agreed. There ought to be some means of doing it without the necessity of securing the full agreement of everybody who has an interest.

1033. *Chairman*: And without having to go to Parliament?—Yes.—*Sir Henry Beresford Peirse*: I think we have in mind that it is also really rather absurd to have to use compulsory procedure when in fact everybody agrees. It is a contradiction in terms when you have complete agreement. There should be a

simple contract as when we buy land by voluntary agreement; the transaction goes straight to the lawyers for completion as soon as we have agreement between purchaser and seller.

1034. Are you not up against the problem of the 'benefit of the neighbourhood'? The Minister has to agree in the case of common land?—Yes. Once agreement has been achieved all round there then seems to be no point in compulsion when there is the acceptance of the idea by everybody.

1035. But 'everybody' in the case of a common includes the members of the public?—It may, but of course in many cases there are no public rights involved in the common, no general rights, that is, only restricted rights.

1036. There may be no legal right of public access, but the Minister has always to consider whether a proposal is for the 'benefit of the neighbourhood'.—*Sir Arthur Gosling*: That is true.

1037. I am not at all clear about the procedure which you propose for parish forests in paragraph 15. You use the phrase 'by voluntary negotiation' but you propose to override an objecting minority and so the procedure would have to be one of compulsory purchase.—Unless a majority was able to act.

1038. The Minister would then have power to override the minority?—Yes.

1039. So that the procedure would be in fact compulsory purchase?—*Mr. Turner*: I think, Sir, we may have got this wrong. What we had in mind is that the land is owned by a person. Assuming there was agreement for use of the common, the reference to voluntary negotiations refers only to discussions between ourselves and the owner of the land; there would be no question of compulsory purchase.

1040. Are you assuming that the interests of the commoners would not be affected?—We were assuming the majority had agreed that the land should be converted to a parish forest in this way.

1041. But you would still have to override the minority?—That would be so.

1042. *Professor Stamp*: Would you become the lord of the manor, or would

the local authority?—*Sir Arthur Gosling*: The suggestion was that the land should be acquired from the lord of the manor and handed over to the local authority.

1043. *Chairman*: The procedure in fact would be that of a public inquiry?—We are attempting to put before you the idea without having worked out precise details of the legal and other formalities which would have to be observed in fulfilling the idea.

1044. *Mr. Lubbock*: It is assumed in fact that the law has been changed?—Yes, to make this sort of thing possible.

1045. *Chairman*: I am trying to find out what is the change required in the law. You say somewhere that interests should be consulted and among the interests to be consulted would be the public. How could this work without a public inquiry of the same type as you have for a compulsory purchase order?—An inquiry would be quite reasonable, probably essential in every case. I think there were two points in mind: first that it should not be necessary, before any action is taken, to identify every individual right holder, and secondly it should not be possible for one of those right holders to hold up a whole scheme. A decision should rest with a majority of some sort; whether a straight majority or some greater degree of majority is open to question.

1046. The position with an inquiry for a compulsory purchase order is that a majority is immaterial. The Minister holds an inquiry. He may override even the majority, and the land is then vested in him. The difference here is that you want to vest the land in the local authority and not the Minister?—The Minister could vest it in himself and pass it over to the local authority.—*Mr. Turner*: I do not think we want to have power to override 99 per cent. of the commoners, or of the local people, but are thinking much more of something that would come forward as a suggestion from local people, like this: '95 per cent. of us' they would say, 'would like to have this common as a parish forest; will you do it for us?'—rather than the Forestry Commission saying 'Here is a common; we do not care whether the right holders want it or not, we want afforestation.' There is a great difference in emphasis. The value

of what we call the parish forest to the Forestry Commission, as we see it, is that we would like to cease to be the villains in the piece, and be instead the people who are called in to help. There would no doubt have to be changes in the law, but rather than the Commission getting the common land by compulsory purchase and disregarding the right holders, we think it would be far better for the Commission—which, after all, has to live in the country in places where there are no commons—if the movement were from outside. A simple machinery can be devised easily.

1047. *Professor Stamp*: By 'the local authority' here do you mean the parish, the rural district or the county?—We would say the parish, mainly for sentimental reasons. Speaking for myself, perhaps the smaller the local authority the better; a county council is a large and almost a foreign body.

1048. To take a hypothetical case, within the parish let us say there is a common of 300 acres, out of which you might regard 150 acres as suitable for afforestation. It would only be that 150 acres which you would suggest should be vested in the local authority?—I think, Sir, as a matter of what is practicable it would probably be necessary to vest the whole common in the local authority, at least initially, and possibly sell off the agricultural land. But all the Forestry Commission would be interested in is the forest land, which would include usually some adjoining land.

1049. I take it you would have to be assured from the Forestry Commission's point of view that the area you wanted was a viable unit, sufficient for your purposes to form an economic working section?—Certainly.

1050. Let me take the other case where the parish or other local authority comes to the Forestry Commission and says 'We own or have the rights over a tract of common land, part of which is afforested, will you manage it for us?' What would be your answer then?—*Sir Arthur Gosling*: We would help them in every possible way in managing a forest.

1051. There was a case I have in mind where the local authority approached the Forestry Commission on these lines and the reply was that the Commission

could not do it because it would not be an economic working from their point of view. They said they would be subsidising the local authority. Is that still true?—I should have thought all these things would depend upon the circumstances of the case. Eventually we would expect that a parish forest of the type we had in mind would be managed by the local authority under our guidance; I do not know the case to which you refer, but if a local authority wanted us to manage their woods for them, our answer at that time probably was to the effect that it would cost so much that it would not be an economic method for them.

1052. I cannot help feeling from what we know of the size of commons contained within a single parish that the Forestry Commission would find itself burdened with a rather large number of small units.—You can produce cases, I am quite sure, to demonstrate that that would be the case; but by and large we have got our staff much more scattered over the country than we used to have; that development is continuing and so it is becoming easier for us to undertake work of that nature, if the need arises. We certainly can do it on an advisory basis. If it was a question of stationing a resident manager, obviously the size of the area would have to be large enough to justify that.

1053. Do you envisage that the local authority, even such a small unit as a parish, would be allowed any voice in the management of land taken over in this way?—Our aim is they should have some say in it.—*Sir Henry Beresford Peirse*: I think we talk about there possibly being an advisory committee for the local management.—*Sir Arthur Gosling*: The suggestion is that we put up the capital to develop the parish forest. That is the basic suggestion. The Commission would be responsible and the forest would be managed in a way which was satisfactory from a forestry point of view. We have made reference to the communal forests on the Continent. Those forests are all managed by the commune or local authority, under the supervision of the government forest service. Sometimes a charge is made for supervision, sometimes not, but all the communal forests are managed according to a plan which is approved by the State forest service, and it is fundamentally part of our idea that parish

forests should be managed in the same way. In fact it is analogous to management by a private owner under a dedication agreement today; he manages his woods according to a plan we approve.

1054. I take it that when you think out procedure a little more fully you would draw up a set of rules and it would be within the power of the parish council to accept the principles and conditions or otherwise?—We should draw up a working plan or plan of operations which would lay down in general terms what shall be done in the way of felling, thinning and so on, and within the limits laid down by the plan the local authority would be free to carry on. That is the sort of general idea in our minds, just as the private owner today for every dedicated estate has a plan of operation which we have agreed. From then on it is over to him, so to speak.

1055. *Professor Alun Roberts*: Might there be a possibility of the formation of voluntary societies amongst private owners who find their units too small individually? I would like to know the Forestry Commission's assessment of how successful the existing ones have been and whether, by analogy with parish councils or local authorities, such societies could work on the same lines?—Yes, there is in fact no reason on earth why they should not work in with the co-operative societies which have been formed. The success of the co-operative societies has been varied but we have been supporting them throughout, and the general outlook seems to us to be improving. We firmly believe that a lot of small woodland owners will secure better management of their properties if they are members of one of these societies which can provide them with facilities they cannot by themselves afford.

1056. Would you agree with my experience that a good many individual small woodland private owners are very much heartened by that development and feel they are being fathered and guided, and yet supreme in their own territory, which is a paramount thing?—Yes, it is part of the Commission's policy to foster these societies.

1057. *Mr. Floyd*: Are we the only country in western Europe where there are no communal forests and therefore no direct contact with the management

of communal woodlands?—Yes. Of course there are some local authorities with substantial areas of woodland.—*Sir Henry Beresford Peirse*: I think that is exactly the basic idea. We hope it would foster a real feeling of local interest and ownership which is lacking in this country. The fact of creating a parish forest, particularly if we place the ownership at the smallest unit of public authority, would, we think, be more likely to achieve that end than any other form of forest. So far as the country as a whole is concerned, it really does not matter, so long as forests are grown and properly managed, who actually owns them. One of the great disadvantages of doing anything with forests on commons is this dislike of the idea of parting with the stake so many people feel they have in such land. If we could replace that by a feeling of ownership in the forest growing up, we feel we should achieve something and dispel the dislike of change in the present arrangements.

1058. *Professor Stamp*: You indicate great respect for that small unit, the parish. However desirable that may be, a parish as such has very small resources whereas the rural district, the next unit above, does as a rule have sufficient funds to employ one or more officials. Would it meet your point equally well if the local authority was the rural district, rather than the parish?—*Sir Arthur Gosling*: I do not think it really makes any fundamental difference. Our idea was that responsibility should go down as far as it could, and it may be the rural district could operate instead of the parish.—*Mr. Turner*: There is always the possibility that after some time the parish would have sufficient resources.

1059. *Mr. Arnold-Baker*: Surely your point is that the funds are coming from you and therefore it is quite immaterial what the resources of the local unit are. You lend your money and ultimately hope to get it back?—I think it would be rather more than a loan. We would provide the money initially. There would be no contribution from the local authority at that stage, but later, after we had been paid, the local people would have an income.

1060. Is that how it works in France and Switzerland?—*Sir Arthur Gosling*: Yes, the local authority is definitely getting a very substantial and very welcome

and necessary income.—*Sir Henry Beresford Peirse*: Of course the difference is that the forest is already there. It is at the stage when it is a revenue-producing asset. We have to create that by some means.

1061. Was that the case in Denmark?—They have been creating forests in Denmark. But they are already there, whereas they are not in this country yet. But whether the State provided the funds originally, I do not know.

1062. *Chairman*: If the land is vested in the local authority, would not the local authority want to regulate it from the point of view of public amenity?—*Sir Arthur Gosling*: That would have to be a matter, again, of agreement between us and the local authority. Of course an essential part of the scheme is that we should provide for proper enjoyment of the local public to the maximum possible extent.

1063. Is your suggestion of an advisory committee rather than using the local authority as the advising body due to the fact that you realise in many cases people from neighbouring towns would have an interest in the common?—That is a factor which we think is important.

1064. So that you would for example put Birmingham City Council representatives on the advisory committee?—*Mr. Turner*: Might I answer that by referring to what we do with the national forest parks—we have just set one up on the Border. There would be, as it were, an advisory committee which would have representatives of such associations as the Ramblers' Association, the Caravan Club, and so on, on it. We had it in mind that there would probably also be representatives of the local people and of such bodies as C.P.R.E. in suitable cases.

1065. *Mr. Floyd*: Would not this idea of parish forests be particularly applicable to the isolated hill areas, possibly in central Wales, where you have a scattered community on land which can really produce nothing at the present time? Would you intend to give those people a real income, a productive asset of their own, rather than to create forests in areas which are very accessible and used by other people?—*Sir Arthur Gosling*: I think the idea would be applicable in the more accessible areas, too, provided due regard was paid to public access. The suggestion has never

been that the whole of any common should be put under a solid block of trees.

1066. *Sir George Pepler*: It says in paragraph 16, 'When net expenditure plus interest on capital had been recovered . . . '—recovered from whom?—From the forest.

1067. But that is when it is a paying proposition?—Yes, but I prefer the expression—when the net expenditure plus interest has been recovered. Somebody may say that it is a paying proposition if the annual income is more than the annual outgoings.

1068. You would then pass the forest to an appropriate local authority. Supposing it does flourish, would you still have a voice in its management?—Certainly.

1069. What happens if you are not successful in raising revenue—has the local authority to carry on?—Quite honestly, our faith in the future is enough for us to say that we do not think that will happen, taking it year in and year out. There might be an occasional lean year due to some accident or other, but by and large once the initial capital has been paid off and you have got a forest consisting of a reasonably varied crop, that situation should not arise. If it did, a temporary loan would be an easy way to get over it, but I do not think it would be a major problem.

1070. *Mrs. Paton*: Since the plans have to be approved by you, you would always have final supervision?—Yes.

1071. *Sir George Pepler*: I was thinking that if the ratepayers had a loss in a particular year, there might be a shindy.—*Mr. Turner*: I do not believe there would normally be a loss in a particular year. There might be because one cannot of course budget for wars and the aftermath of wars, but there would not be a loss in normal times.—*Sir Henry Beresford Peirse*: I think the other possibility might apply, that the parish, from having no assets at all, might suddenly have an *embarras de richesse*, and not know how to spend it. That, I believe, is not over-optimistic if we take a long enough view.

1072. *Mr. Arnold-Baker*: Is it possible to provide us with some figures on the financial prospects of a particular communal forest?—*Sir Arthur Gosling*:

It is very difficult to do so with any accuracy. You would have to work it out for a long period ahead, say fifty, sixty, or seventy years. You would have to guess what your timber would be worth at the end of that time, how much you would have to sell, what the price would be; and then the one thing which affects any calculation like that to a tremendous extent is the rate of interest you decide to adopt. If you adopt a low rate of interest it will obviously show better returns than if you adopt a high rate. All those things make it a little unrealistic to say how much you would have in the bank at the end of seventy years, but it enables you to compare one method with another method of management, or one crop of trees with another crop.

1073. *Sir George Pepler*: Are forests derated like agricultural land?—Yes.

1074. *Mr. Floyd*: Could you tell us, supposing the land was suitable for planting and it was planted in a reasonably sized block, how long it would be before the annual return from thinnings exceeded the annual cost, without repayment on capital, just covering interest charges on the money invested?—In general terms, one would say probably about 25 years, something of that order; some would be quicker, others slower, but to take a fairly average and reasonable expectation, about 25 years.

1075. *Chairman*: Repayment of capital would take fifty years or something of that order?—I do not think it would be fair to expect in general that capital would be repaid until the beginning of the selling of the final crop fifty, sixty, or seventy years perhaps.

1076. So you are vesting an intended forest in the local authority and telling them that in fifty or sixty years' time they will make a lot of money out of it?—That is so, but I do not think we need apologise for that. It is a long term thing we are trying to do, and they will have an asset which we believe firmly will be of great value to them.

1077. Suppose at the end of fifty or sixty years the local authority decide they would make much more money by selling the land as a building plot?—*Mr. Turner*: The 1951 Act is still in existence. They cannot do so without permission. There is power to attach a condition requiring re-planting to all licences for felling.

1078. *Professor Stamp*: I notice in the supplementary note on National Forest Parks a number of those mentioned are actually in National Parks such as Snowdonia. What is the relationship between the National Forest Park as you set it up, and the National Parks Commission?—We have a very close, amicable relationship between ourselves and the National Parks Commission on the administration of our parks. Taking Snowdonia, we administer and look after our own park sites which we have developed, and so on, within the boundaries of the National Park.

1079. So that conditions of access and so on which might be laid down by the National Parks Commission are subject to special conditions within your areas?—Exactly.

1080. *Chairman*: May I ask what positive action is taken by the Forestry Commission when it declares one of the forests a National Forest Park, in the way of providing facilities for visitors?—*Sir Arthur Gosling*: Usually the first type of facility we provide is camping grounds. We generally provide water supplies to the bigger ones, and lavatory accommodation. We sometimes provide also a building which is suitable for use in wet weather and so on. We co-operate with such bodies as the Youth Hostels Association in trying to facilitate the establishment of hostels. We develop paths and access routes which are frequently labelled and marked, and plans are available to show where they are. We also issue guides which give people a full story of the park and its historic and other interests, such as the sample copies we have supplied you with.

1081. There is no difficulty under the Forestry Commission's statutory powers in spending money for such purposes?—I have not encountered any difficulty. I think it is certainly within our power.—*Mr. Turner*: We regard it as within our statutory powers, as something ancillary to forestry.

1082. So if the forests of the country were handed over to the Forestry Commission, the first thing you would do would be to provide facilities for public access?—*Sir Arthur Gosling*: I thought we were talking about National Forest Parks.

1083. I was just trying to make a logical deduction.—*Mr. Turner*: We

have not done that in any large way in forests which are not Forest Parks—obviously we cannot, but if, for example, we can lay aside a space by the roadside so that people can enjoy the view, so much the better.

1084. *Dr. Hoskins*: May I ask some questions about the Commission and Dartmoor? I think you have about 4,000 acres planted on Dartmoor?—*Sir Arthur Gosling*: That is so.

1085. Does that include any reserve of land?—Practically the whole of the area we own in Dartmoor at the moment is planted.

1086. And all this has been taken in about the last 25 or 30 years?—Yes.

1087. By what procedure and from whom was the land taken?—It was taken by an ordinary procedure of purchase from the owner. I believe that all the areas were bought from the Duchy of Cornwall.

1088. In that case, what happened about the common rights which are said to extend over the whole of the Forest of Dartmoor and the adjacent commons?—I can only say that it was understood there were no common rights on the areas we purchased.

1089. Was it not established in the 1880s that there were common rights over the whole of the Forest and the whole of the so-called commons of Devon; and has it not been re-established in the famous B.B.C. television mast case in 1953?—I am sorry, I cannot answer that question directly, but as far as I recall the situation at Dartmoor, it was accepted that there were no common rights over the areas of which we took possession.

1090. Accepted by whom? There was opposition at the time, was there not, in about 1930?—I am afraid there is generally opposition to change of use of land on Dartmoor.

1091. Opposition then from people who thought they were commoners?—Would you let me look into the history of this and let you know it?

1092. I should like to know. Are there any further areas on the Moor you are contemplating for planting?—I should say we think there are areas on the Moor which it would be a very good plan to plant; beyond that I could not comment.

1093. You had a special plan, I think, for taking in and enclosing 150 acres or so of Haytor Down last year, which met with opposition. Has that plan been dropped?—Yes, it was dropped at the time, because of difficulties over common rights.

1094. How successful has your planting been on the Moor? I have in mind that some of the plantations look distinctly stunted and windswept, and I should have thought they were an economic failure.—One block of plantations, with which I have no doubt you are familiar, has grown rapidly. The other block is much slower in growth. It is a site which is not at all a fertile one and it is also exposed. Growth has been slow, but we believe quite confidently that there we shall get eventually a crop which will be very well worth while.

1095. You still think that Dartmoor is a good area in general, suitable for planting?—A lot of it, but not all.

1096. Despite this particular experience?—Yes. We would use a different technique today if we were afforesting the area to which you are referring, and we should get much more rapid growth in the initial stages.

1097. I would like to ask one or two questions about your policy where ancient monuments are concerned. I raise this because I think the Royal Commission is interested in, and has to take into account, the public enjoyment of commons. Have you any policy where ancient monuments are concerned that stand in your way?—*Mr. Turner*: Yes, we have a policy which is maximum protection. We were referring this morning to consultation—one of the bodies we consult is the Ministry of Works, and if we are told of any ancient monument and asked to protect it, we do. Normally we are asked to protect. There have been cases, I think, now and again, where we have been told, this is all right and is of no significance, but normally we protect.

1098. How good is that co-operation, because it is said in two cases, Fernworthy and Bellever, there has been considerable destruction of ancient monuments?—I think in one or two cases there was a failure to notify us, and we just did not know. I do not know the details.—*Sir Arthur Gosling*: Both cases happened a considerable time ago. The liaison today is extremely good. If we

are told about anything we are very careful to protect it, and we do not necessarily wait to be told. The Ministry is asked if there is anything of interest, and sometimes the maps disclose it anyway.

1099. Is it safe to rely on a map?—We do not rely on maps but they do often draw attention to something requiring investigation.

1100. So in fact you take steps now to ensure that there is no more destruction of these monuments?—We have always been extremely sympathetic and interested in that particular matter.

1101. Nevertheless you have in fact in different places obliterated some?—I think certainly in one case we were never told it was there.—*Mr. Turner*: In any case we shall be celebrating next week the planting of one million acres. It is inevitable that now and again mistakes happen. We know of two cases but we do not know of any others. We do our very best, we can say with confidence, not to destroy or damage ancient monuments in any way. That is our policy, and those are the instructions to our staff.

1102. Since it has been re-established in 1953 that the whole of the Forest of Dartmoor and the surrounding commons are subject to common rights, does that deter you from the prospect of acquiring more land?—*Sir Arthur Gosling*: Obviously if there are common rights on it it would be much more difficult to acquire than if there are not; but I really am not fully informed about the establishment in 1953 of that fact.

1103. *Chairman*: I have just a couple of questions on the New Forest, which is dealt with in Appendix III of your memorandum. I wondered firstly if you could give us first an explanation of the refusal of the Verderers, which is referred to in paragraph 5. What reasons did they give for refusing?—Do you mind if I ask *Mr. Wynne Jones* to answer? He is the Deputy Surveyor of the New Forest and in fact carried through the negotiations to which you have just referred.—*Mr. Wynne Jones*: I think the main reason was the popular resolve to the effect that there should not be any more enclosures.

1104. Is that 'inclosure' or 'enclosure'?—Both. We used the words 'enclose' and 'enclosure' in the sense of asking for permission to enclose. When we referred to them as the Verderers' inclosures subsequently, it

would be spelt with an 'i'. It always has been the practice in the New Forest for the existing inclosures, nearly all of which have been made by statute, to be spelt with an 'i'.

1105. Were the 5,000 acres to be permanently inclosed or just fenced while the trees were growing?—They were to be permanently inclosed under the Act.

1106. And the commoners object that this would take away their grazing land?—Yes.

1107. It was not a question of amenity?—There were objections on the grounds of amenity. There were people who spoke in favour of added amenity, including a representative from the C.P.R.E.

1108. *Mr. Lubbock*: Was it in fact the Chairman's casting vote which decided the matter?—It was not exactly a casting vote, but it did decide it.

1109. *Chairman*: The general impression this part of the memorandum gives me is that, apart from the refusal to add the additional commons recommended by the New Forest Committee, the Forestry Commission is not very interested in any change. Do you think that the position is very satisfactory in the New Forest now?—Yes.

1110. It is not merely that since it was inquired into recently you feel that?—Under the existing legislation the position is satisfactory.

1111. *Sir George Pepler*: Do you agree to the suggestion made in the report of the Committee referred to in paragraph 3 that the Forestry Commission should acquire these additional adjacent commons?—*Sir Arthur Gosling*: The Commission think that the arguments that the whole of the commons should be brought in are pretty convincing ones. But they are arguments which I might describe as agricultural. They are arguments about the running of stock which is non-T.T. in the New Forest and so on, and why it is necessary it should be brought under control. Those arguments appear to us—we are not agriculturalists—to be pretty convincing, but the Minister can only acquire under the Forestry Acts land for forestry purposes or purposes connected with forestry, and if the object of acquiring

these lands was solely to regulate the grazings, the Minister could not acquire them under the Forestry Acts. If, however, there was a proposal that part of them should be planted, it would be a matter which the Minister could consider.

1112. Have you considered whether or not they would be useful to you?—I think we can say without any doubt that, while we have not examined these commons with that in view, we know very well they are quite suitable for planting; whether they should be planted in view of the other interests or not is a matter we have not investigated.

1113. *Mr. Floyd*: Would the Forestry Commission agree that the state of the New Forest commons was rather more satisfactory than that in other parts of the country, simply because there is a Court of Verderers, and some system of management?—Most definitely. I think we would say more use can be made of the land in the New Forest today than is being made, both for grazing and forestry, but we think the situation is much more satisfactory and is under control.

1114. *Sir George Pepler*: There is a reference to sawmills on page 12 of that report. If you were taking over a large area of common land, would you want sawmills, and also equipment for other types of woodworking?—It would not be likely there would be permanent sawmills or woodworking equipment on the commons such as those we have been discussing today. The permanent plants would be situated elsewhere. There would of course be small apparatus for sawing up and that sort of thing, but not permanent industrial structures.

1115. *Mr. Floyd*: Might I ask whether you would prefer to see the New Forest and Forest of Dean continue as special areas under special Acts rather than fitted into some general plan for protecting commons?—We feel that they should be left under their own Acts for historical and other reasons. They are very peculiar and unique places in their way and we think it would be better for them to continue to be controlled by Acts of their own.

1116. As we have the company of Mr. Wynne Jones this afternoon, may I raise one point which is not on any of these papers, but I feel the Commission

may hear something about it at some stage; that is the question of gypsies. I wonder whether Mr. Wynne Jones, who probably knows more about that than anybody else, could give us any views on any possible suggestions as to legislation, with regard to gypsies, especially in the New Forest?—*Mr. Wynne Jones*: Especially as regards the New Forest, I have the feeling that the problem is slowly being solved. When I say that, I remember that 8 or 9 years ago there were 471 persons designated gypsies; now there are about 160. That is because the local housing authorities have been doing their very best to rehouse some of the gypsy population. When you talk about 471 persons, you really want to think in terms of roughly one-third gypsies; the other two-thirds—if you will excuse the expression—are spivs; people who want cheap living and do not want to pay a rent, and that sort of thing. It is a long-term project, because the hard-core gypsy is a man who must live as a gypsy. There was a case recently where a gypsy family was rehoused, and within six months the man came back with a doctor's certificate saying that he would not live unless he went back to the Forest.

1117. *Sir George Pepler*: Is the hard-core gypsy a difficult fellow to control?—*No*. We have New Forest gypsies, and for the most part they are friends of the keepers. It is the other type which causes the trouble.

1118. *Mr. Evans*: I wonder if you could say a word on the policy on the proportion of softwoods and hardwoods, and how it is working out in the New Forest.—*An undertaking was given some years ago that the proportion of hardwoods to conifers would be maintained. The proportion today is 60 per cent. softwood and 40 per cent. hardwood. I am quite satisfied that the proportion is being maintained, as a result of regeneration. We have, in fact, over the last four or five years planted over half a million oak and beech in the New Forest.*

1119. *Chairman*: May I ask just a couple of questions on the Forest of Dean, which is of course under investigation by another Committee. Have the mineral rights, which are referred to,

now been vested in the Crown?—*Mr. Hinds*: Not the free miners' rights.

1120. And has there been any registration of common rights in the Forest?—*No, not common rights.*—*Sir Arthur Gosling*: The free miners' rights are registered; not the commoners' rights.

1121. So there is nothing equivalent to the register in the New Forest?—*That is one of our difficulties, and one of the reasons for the Committee's existence.*

1122. *Professor Stamp*: May I refer to a general matter? We are concerned with much common land which is at a high elevation, mountain common land, and I imagine it is above the level which is of any interest to the Forestry Commission for planting. Can you give us any general guide as to the highest levels in the South-West, Wales and the North of England, to which successful afforestation has been taken?—*It depends again entirely on the locality. We have in recent years been tending to plant higher than we normally used to do. In parts of Wales we can creep up the hills to 1,700 feet with some confidence. On, say, the extreme western seaboard, we cannot go up more than about 900 feet. But in the hills, where there is a fair amount of shelter, we can quite definitely often go to 1,500 feet, although it can only be done in selected places.*

1123. I think this follows on the question which Dr. Hoskins asked, with regard to the success of certain plantations on Dartmoor. Am I right in thinking that you have gradually got to build up a forest? If you get it established at a lower level, you can then plant above and so gradually work up a hillside?—*That is so. It hardly applies to that particular plantation on Dartmoor, but the point you make is a very sound one.*

1124. So that we are really not safe in saying that because certain common land is above 1,000 feet it is of no interest to you?—*No. I certainly hope you would not think that.*

1125. It may be up to 1,250 feet?—*It may be. In parts of Wales, 1,250 feet would be quite usual.*

Chairman: Thank you very much indeed. We are most grateful to you for having stood up to our questions for so long.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

7

Wednesday, 16th May, 1956

WITNESSES

Cornwall Commoners' Association

Mr. George Sandercock

Sir John Molesworth St. Aubyn, Bt.

County Planning Department, Cornwall County Council



LONDON

HER MAJESTY'S STATIONERY OFFICE

1956

TWO SHILLINGS NET

of 63.

List of Witnesses

WEDNESDAY, 16th MAY, 1956

MR. T. H. TONKIN

Chairman

MR. GERALD PETER

Joint Secretary

MR. RUSSELL PERRY

Joint Secretary

on behalf of the Cornwall Commoners' Association

accompanied by

MAJOR E. E. HARE, M.C.

Chief Constable of Cornwall

MR. GEORGE SANDERCOCK

*A lord of the manor of, and portreeve for,
the manor of Penpont and Treglasta*

SIR JOHN MOLESWORTH ST. AUBYN, BT.

Lord of the manor of Blisland

MR. H. W. J. HECK, DIP.T.P., P.P.T.P.I., M.I.MUN.E.

County Planning Officer for Cornwall

MR. A. J. LANYON, M.A.

Assistant Planning Officer (Agric.)

on behalf of the County Planning Department, Cornwall County Council

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at the Guildhall, Launceston, Cornwall

Wednesday, 16th May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,

F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Cornwall Commoners' Association

The first meeting to form the Cornwall Commoners' Association was held in June, 1934, and all commoners and lords of the manors are automatically members of the Association.

The Chairman, Vice Chairman, Secretaries, Treasurer and Executive Committee (total 20) are elected at each Annual Meeting in January. The Executive is chosen by one or two commoners from each Moor being elected.

There are Committees for each of the following areas:—

1. West Moors.

2. East Moors.

3. Cardinham Moors.

4. Hamatethy & St. Breward.

5. Rosecraddock Moor.

6. Davidstow Moor.

These Committees deal with matters relating to their own Moors and report to the Executive on major items such as proposed drainage or improvement schemes.

In 1936 the Committee obtained an order under the Commons Act, 1908, from the Ministry of Agriculture as to controlling stallions on the commons and later got this extended to bulls on commons. The Ministry of Agriculture have detailed maps showing the area known as the Bodmin Commons which covers about 17,000 acres and extends from St. Neot to Bodmin.

During the war the Agricultural Executive Committee requisitioned about 800 acres of commons and fenced and ploughed up same and greatly improved the land. By mutual arrangement and to get over the difficulty about keeping up the fences, the Agricultural Executive Committee have extended the requisition on most of the land from time to time and by arrangement with the commoners the latter stock the fenced land. This arrangement has worked well but the time will come when the Agricultural Executive Committee can no longer continue the requisitioning.

Finances: The original scheme was to charge each member a small annual subscription of 2s. but the cost and difficulty in collecting caused this to be stopped. After the war a sum was agreed for the rent of the requisitioned land and after some years a considerable sum was recovered from the War Department for damage done. These sums were paid to the Commoners Account and it was decided to spend the same on sanding and improving the commons. Up to the end of 1954 about £8,000 had been spent on sand which at 10 tons to the acre means that an area of about 1,700 acres has been treated and greatly improved the grazing. In addition to this about 70 acres at Cardinham have this year been cleared of furze and dressed.

In close conjunction with the Agricultural Executive Committee the following major drainage schemes have been completed and a number of dangerous hogs dried out and at least 500 acres of land drained.

West Moors:—Buttern, Highmoor and Waterworks Valley.	}	Cost £2,598 6s. 9d.
Shallowater and Scribble Down.		
East Moor near Poldhue gate.		
Cardinham Down.		
Menacrin Down.		
Ninestones Marsh.		

To provide funds for the commoners' share of the above improvements the commoners agreed to about £2,000 per annum of their Hill Cattle subsidy being kept by the Agricultural Executive Committee and applied for commons improvements. After working amicably with the Agricultural Executive Committee and getting drainage grants we have just been notified that the Minister now feels that no more schemes must be put through unless his consent is given. The commoners naturally feel very frustrated over this action from Whitehall and think the whole question of management of the commons should be decentralized and dealt with by the Association and if desired in consultation with the Agricultural Executive Committee.

In conjunction with the County Council four grids were erected at Davidstow and the commoners have erected one at Tremail at their own expense (nearly £800). Many more grids are required and the Association feel that this is now a national matter and the cost should be borne by the Transport Authorities to safeguard road users.

In the opinion of this Association the present law relating to commons is out of date and requires amendment.

This Association in view of the difficulties it has come across in the last 21 years suggest the following matters receive the serious consideration of the Commission.

1. That a recognized body such as the Cornwall Commoners' Association should be empowered to make rules governing the managements of the various commons within its area subject to three weeks' notice in the local press being given convening meetings of the different commoners and to the majority of those present voting in favour and to the lord of the manor concerned assenting.
2. Such management powers to include the right of the Association to drain, plough and reseed suitable areas, fence and keep existing fences erected by the Agricultural Executive Committee up, manure, plant windbreaks,

and to make and enforce regulations as to stocking each year according to the grazing available and if necessary to determine the total number of cattle, sheep or horses that each commoner is entitled to turn out.

3. That the Ministry of Agriculture be empowered to pay a percentage of the subsidies for cattle, cows and sheep payable to commoners direct to the Association and if and when the subsidies cease the Association to have power to fix a headage charge for improvements on any particular common.

Section 194 of the Law of Property Act, 1925, should be amended.

The Association have at present an application before the Minister for leave to fence the A30 main road and have the full support of the County Council, Police, N.F.U. and R.S.P.C.A., as about 20 bullocks a year are killed on this road by cars and lorries, mainly at night.

4. That the slow, cumbersome and costly procedure set out in the Commons Act, 1876, should be abolished or amended.

The Cornish commons lie between Launceston, Bodmin and Liskeard. Advertising notices in three local papers published in the above towns cost £16 for three weeks, notices have to be served on local authorities and then there is a three months' delay for objections.

This Association will reluctantly be compelled to apply for an order under the Commons Act, 1876, unless there is likely to be an amendment of the law.

Memorandum of Evidence Submitted by the Cornwall County Constabulary

BODMIN MOOR

ACCIDENTS RECORDED

Launceston—Bodmin Trunk Road A.30. 1947 to 1955

Period	Accidents with Personal Injury	Accidents without Personal Injury	Total Accidents
1.1.47 to 30.6.51 ...	(Not available)	(Not available)	77
1.7.51 to 31.12.51 ...	6	20	26
1.1.52 to 31.12.52 ...	4	35	39
1.1.53 to 31.12.53 ...	6	31	37
1.1.54 to 31.12.54 ...	3	41	44
1.1.55 to 31.12.55 ...	5	42	47
Total Accidents ...			270

All of the above 270 road accidents involved collision with stray animals, either in groups or single bullocks or ponies and in a lesser number of cases, sheep.

ANIMAL CASUALTIES

Records available since November, 1954, reveal animal casualties to be as follows—

Killed (or afterwards destroyed owing to injury) ...	23
Otherwise injured ...	10
Uninjured or not known ...	22

FREQUENCY OF ACCIDENTS

Of the 270 accidents recorded during the total period of 9 years, it has been found that these have occurred in the months and quarters of the year as indicated hereunder—

JANUARY	...	16	}	...	30	}	...	270
FEBRUARY	...	6						
MARCH	...	8						
APRIL	...	9	}	...	24			
MAY	...	5						
JUNE	...	10						
JULY	...	24	}	...	92			
AUGUST	...	38						
SEPTEMBER	...	30						
OCTOBER	...	46	}	...	124			
NOVEMBER	...	43						
DECEMBER	...	35						

Taken over a comparative period of six months from October, 1954, to March, 1955, it is found that the proportion of accidents occurring during the hours of dusk or darkness is 90 per cent.

The sites of accidents are distributed over the approximate 10-mile length of the A.30 road from Callywith Fork to Bolventor with a much fewer number on the short length from Cannafraime to Trewint.

By far the heaviest concentration is located on the length between Pound's Cawnse and the top of Shallowater Hill (east of Hawk's Tor), and as there are hedged sections on this length in the region of Greenabarrow Farm, Temple Cross and Hawk's Tor Hill, there is a marked tendency for cattle to congregate within these more sheltered sections and in depressions such as Pound's Cawnse and Hawk's Tor Bridge during bad weather.

The incidence of accidents naturally increases during the months of shorter daylight hours and adverse weather conditions as will be seen from the foregoing table.

Cattle Warning signs for motorists have been erected at 5 points on the length of road between Callywith Fork and Trewint for traffic travelling towards Launceston and 5 for traffic travelling in the opposite direction.

Examination of Witnesses

MR. T. H. TONKIN, MR. GERALD PETER, and MR. RUSSELL PERRY, on behalf of the Cornwall Commoners' Association, accompanied by MAJOR E. E. HARE, M.C.,

Called and Examined

1126. *Chairman:* Mr. Peter, would you like to introduce your companions?

—*Mr. Peter:* Mr. Tonkin, the Chairman of our Association, is on my right, and Mr. Russell Perry, the other joint secretary, is on my left. Sir John Molesworth St. Aubyn and Major Hare, who are going to be called later, are also present. Might I, Sir, follow the mayor and give you a very hearty welcome to Cornwall. You have braved the dangers of coming over the Tamar. The devil was afraid to do so when he was

threatened with being put in a Cornish pasty, but we promise not to do that with the Royal Commission.

1127. My first questions are designed simply to get some of the elementary facts. As you appreciate, most of us know nothing whatever about the Bodmin Moors. First, your Association includes all the lords of the manors and the commoners in an area of 17,000 acres stretching from St. Neot to Bodmin, and usually called the Bodmin Moors?

—That is so, they were designated as the Bodmin Moor in an Order under the Commons Act, 1908. I have a map of the area here. (*Map shown to Commission.*) It is not a continuous area. There are pockets of moors, and there is a lot of other land in between them. That is why we have six different committees each dealing with one area, such as the West Moors or East Moors. The green on the map represents where sanding has taken place, the red where draining has taken place, and down at the bottom there is a blue area, which denotes requisitioned land. The brown line is the A.30 road, that we have asked for leave to fence. I understand that you have seen the official maps of the area covered by the Order under the Commons Act, 1908. They might be very useful to you, because they are the only maps I know showing the old manor boundaries.

1128. Yes. All this large area is included in 22 manors?—Twenty manors, Sir. I think probably you have taken Fawton-trenay-St. Neot as three manors, but in fact it is one, and there are 20 on my reckoning.

1129. *Professor Stamp*: Although your Association is called the Cornwall Commoners' Association, it is in fact restricted to the area of Bodmin Moor?—Yes, under the Order we obtained under the 1908 Act. That designated the area to be known collectively as the Bodmin Moors.

1130. *Chairman*: The maps which we have seen are maps prepared for the regulation scheme under the 1908 Act?—Yes. The late Mr. Hedley Rich, who knew the moors all his life, Mr. Harry Bastard who knew the Hamatetby manor, and Mr. George Sandercock, lord of the manor of Penpont and Treglasta, had some maps of manors, but it took them a lot of trouble and nearly a year to get the maps prepared with three commoners' signatures to each, in order to get the regulation made.

1131. *Professor Stamp*: The maps were agreed by a majority of those interested?—We had a good many public meetings advertised in various places, and Mr. Hedley Rich was appointed with some others to collect the evidence before we could get the regulation about stallions made. I think there were three or four meetings, and

finally the maps were put to the general meeting and approved by a majority of all the people who attended, and as far as I know they are accurate.

1132. *Chairman*: There was no opposition, I take it?—None.

1133. And there is no dispute about boundaries?—None. Messrs. Rich, Bastard and Sandercock were three of the best-known men—luckily we got the information when we did, because their knowledge went back to about the 'sixties.

1134. *Professor Stamp*: On the Chairman's first question, the Association includes automatic membership of all lords of the manors and all commoners; what happens if a lord of the manor or a commoner disagrees and wishes to contract out and not be a member?—We have not had that, but we have had one or two not agreeing. We simply had to make that regulation that they automatically became members; whether they take any active part or not is up to them.

1135. But you have had complete agreement, or do those who do not agree just remain silent?—Unfortunately we have a case of one commoner who will not obey regulations and cuts fences, and one lord of the manor who says he does not disagree with our fencing A.30 but wants compensation in cash—for what nobody knows. So we have a case of each, a commoner and a lord of the manor, not falling in with the general body, and that is one of our main troubles today. We have been doing a lot of things without any legal power, only by agreement.

1136. *Mr. Evans*: In the first of the recommendations in your memorandum, you still wish the lord of the manor to have complete power, in that if he withholds his assent no scheme could go on; is that so?—We put in that he must always be consulted, but there is a good deal going to crop up if the law is altered, for improving commons. May I put it this way: take an enclosed area of some hundred acres, where thousands of pounds have been spent in improving it; as the law stands today, a lord of the manor can put unlimited stock on it himself and oust the commoners who have spent all that money on improving the land. That is not fair.

We say that the law should be amended so that there should be fair play for all.

1137. *Chairman*: But what right has he to put unlimited stock on the common?—Because it is his land, he owns the freehold. A lord of the manor may put on an unlimited number of his own stock, but he may only sell surplus grazing. I have had 50 years here struggling with the law of commons.

1138. Surely he cannot put stock on the land if it interferes with the commoners' rights?—He has the prior right, he is the owner of the soil.

1139. But he is bound by the commoners' rights, is he not?—I think he came first. If you go back to the Saxon days, it was the lord's land and he allowed his serfs to stock the waste of the manor. That is the law. I have plenty of authority for it, and as a lord myself I have actually let surplus grazing by public notice in the press. I have not actually stocked any hullocks myself on the moor, but there is nothing I know in law to prevent unconscientious lords going and huying two or three hundred Galloways and putting them on the command land at Cardinham and absolutely ousting the commoners. I say that is absolutely wrong. That is a matter which has been raised by various commoners at our meetings.

1140. *Mr. Evans*: Could I just return to the first of your recommendations, the actual wording of it, because it says: "subject to three weeks' notice in the local press being given", etc., and "to the majority of those present voting in favour and to the lord of the manor concerned assenting". Do you really mean that?—We now want to go further. It has cropped up since the memorandum was prepared rather hurriedly at Christmas. We think there ought to be some right of appeal, not only for the lord but for commoners, because if we were given powers to say how many cattle a commoner can put on a moor, the big man—the man with 200 acres—or the little man might be penalised. There ought to be some final appeal to the A.E.C. or the Minister or someone, and some check on the lord's power. The commons today are carrying so much more stock than they used to in the old days when the laws were made that those laws want bringing up to date.

1141. *Mr. Arnold-Baker*: Although you originally proposed a veto for the lord, you now in fact want to abolish it? In other words, you have changed the first recommendation in your memorandum?—Yes, although I am a lord myself. It is unworkable today. I think the lords must be consulted on those things, but I do not think they should have the final decision, because they have not taken much interest in their commons for many years. Some are concerned about shooting rights and things like that, but otherwise I do not know a single lord who has stocked his commons round here.

1142. *Chairman*: Do the lords take an active part in the work of the Association?—Some of them, Sir, have been very active. I think five or six of the lords have taken a very good part—Sir John Molesworth St. Aubyn, Captain Hall, Mr. Tonkin, Mr. Sandercock, and myself. We have worked very amicably with most of the others; if I have written to them for consent to anything, they have generally given it.

1143. *Professor Stamp*: Have you any areas where the lord of the manor is not known?—We knew them 16 years ago, but I am afraid I have not checked up lately. I think we know nearly all, but there are one or two small manors I would not be too sure about. I think I could give you about three-quarters of the names right off.

1144. And do you not have the complication here of the passing of the lordship of the manor to a public authority or similar body?—No, they are all private. In one case, Rosecraddock Manor, we had a lot of cattle, some of which fell into a quarry and some into a mine adit there. We told the owners that under the Act they ought to fence it. They have, however, turned themselves into a company, and we cannot get any damages out of them.

1145. *Chairman*: You mean they have conveyed the lordship to the company?—Yes. Talking of public authorities, there is a very small portion of down near St. Neot called Goonzion, and the position there is that I understand the parish council are acquiring or have acquired a bit of it for a playing ground, but it is a very small area.

1146. *Mr. Arnold-Baker*: Do you know who all the commoners are?—

I cannot say that we do. When we were formed 15 years ago, we advertised four public meetings, at Five Lanes, Camelford, Cardinham and Liskeard, which covered the area. We asked everybody claiming rights of common to attend and bring their deeds or other evidence. A great many commoners or their solicitors attended, with or without the deeds, and we made notes. Later they wanted to have a committee formed at Hamatethy, so we did the same there two or three years ago. We had a record of those who were approached, and we took notes of the deeds, many of which set out on what moors the rights were granted. If they could not prove it by deed we accepted 40 years' user if vouched for independently—there were a lot of very old men, and if they said: 'I know John Jones, and his grandfather always stocked that moor', we accepted that. That is the only record we had, but the trouble is that there are non-resident landowners who may not have seen the advertisements; probably half the people with common rights have not exercised them.

1147. *Professor Stamp*: Do you keep a live record or register with all these particulars added to from time to time?—I think we would say, Sir, we make the commoners police themselves. The commoners know in each area pretty well who has got rights there, and we rely on the local committees to see that no strangers put stock on the moors.

1148. Do they keep a written record?—No, Sir, I only have notes of the meetings when we were first formed.

1149. *Mr. Arnold-Baker*: Do you find that adequate in practice?—We have not had any difficulties crop up. Every now and then we get an inquiry whether a certain farm has common rights. I turn up my records to see whether anybody has claimed anything in the past, but commons are like folklore, and it is handed down from generation to generation that this farm has a right or that farm has a right. You can always get hold of half-a-dozen of the men on any particular moor and they will tell you pretty well who has got rights there.

1150. So you do not in fact have any disputes?—Not over the question of stocking. When we were first formed

we did get a bit of trouble. Several people, such as the postmao, came along and thought if they paid a 2s. fee they could put what they liked on the moor. That was fatal, and we stopped it pretty quickly. I have a very interesting report of the same thing being discussed in 1893, the question of people without rights on the moor stocking it then. The report tells of exactly the same things as we are talking of today; it has been going on for generations.

1151. *Professor Stamp*: Theo I am right in thinking that your Association has an unknown number of members, and that they have unknown rights which are not recorded in writing?—Not exactly unknown rights. Anybody who can prove common rights are attached to his property is covered by levancy and couchancy rules.

1152. There is no stioting attached to those common rights? Does each commoner have a right of pasturing so many animals?—Levancy and couchancy is the rule adopted on all our moors. There are no fixed numbers at all.

1153. *Mr. Evans*: Is that decided by the committee?—No. The power to stipulate the number of stock is one of the powers we want to have, because to-day I suppose every little holding will carry nearly twice the stock it carried fifty years ago. With modern manures and intensive farming, and advice from the A.E.C., these holdings are carrying enormous stocks. If everybody stocked what he could winter, there would not be enough room on the moors for them all.

1154. *Professor Stamp*: Your Association receives and disburses moneys; what is the legal standing of the Association? Is it registered as a charity, or what is its position?—No, we are simply a free body of people, like a club, you may say. We have no legal status except under the two regulations made by the Ministry for controlling bulls and stallions. That is our only legal status. We have the right under those regulations to take unclaimed ponies and sell them, and I think that is about all the authority we have. We asked the Ministry to allow us to make a lot of regulations, and they said: 'It cannot be done unless you proceed under the 1876 Act', which as I expect

you know means an Act of Parliament in effect. The Houses of Parliament have to consent to regulations under the Act of 1876. It means a provisional order. I think everybody agrees that this Act is unworkable. We could get everything we wanted under the 1876 Act, but it is very complicated.

1155. *Chairman*: The amount of clerical work involved in your organisation must be quite substantial. How is that paid for?—We do not pay for it, I do it as a more or less honorary job. I suppose I write about 150 letters a year, and attend meetings. Mr. Russell Perry and I are given honoraria of £30 and £20 a year to cover expenses for telephones, postage, travelling, and so on.

1156. What does that come out of?—That comes out of the funds, Sir. We have two funds. We have the fund which was started by the rents from the A.E.C., plus the war damage, plus 10 per cent. of any receipts. That is what we call our fighting fund. Davidstow Moor was requisitioned during the war by the R.A.F., they paid rent, and 10 per cent. of it went to the commoners' fund and the rest was divided among the Davidstow commoners. The other fund is the commoners' fund, and is kept at Truro by the A.E.C. Approximately one-third of the grants from the Hill Farming subsidies are by arrangement transferred to that fund. We enter into contracts with the A.E.C. for drainage, manuring and so on; these improvements are paid for from that fund, which is generally £2,000 or £3,000 in credit. Each year's subsidy comes in at the end of the year, and then each January we issue a statement showing the financial position and setting out what is credited to each of the different moors, so that they are all treated fairly. For a big moor like the West Moors, their share of the subsidies may run to £750 or £1,000; the West Moors commoners then allow their committee to spend up to that amount out of their money, so there cannot be any argument that one moor is benefiting at the expense of another. Every year each committee has a statement showing how much it is in credit and how it proposes to spend the money, on draining or sanding, for example.

1157. Is there no charge upon any of the commoners?—None whatever,

nor do the A.E.C. make us any charge for their work. The commoners voluntarily give up the share of their subsidy towards improvement; under the Act, the A.E.C. could make them give up to 60 per cent. if it wanted to, but they have been content with giving up 30 per cent.

1158. There are two points arising out of that answer. The first is that there has been a recommendation that the A.E.C.s should give up their executive functions; if that was adopted what would happen to your secretarial duties?—We should have to take them on, that is all. I took on the job sixteen years ago, on condition I had Mr. Russell Perry to do the outside work, while I looked after the office end, and it works very well. We have a very good working committee of twenty, which meets about four times a year; the local committees meet out in their parishes. We also have a very pleasant annual meeting which starts about 4 o'clock, and then we have a dinner. The A.E.C. generally come and help us out, we get a few good speakers down, and it has been most friendly. Over a hundred attend it every year. It is a very matey Association at the moment, with just the few odd people who will not play.

1159. *Professor Stamp*: Is all this done out of the Hill Cattle subsidy money which you receive?—No, Sir; they all pay ten shillings each for their dinner.

1160. *Sir Donald Scott*: May I ask how often the local committees meet?—Three or four times a year, Sir, according to what has cropped up. They are not very big. Half-a-dozen of them generally get together and thrash the problems out, and then if there is anything serious they report in to me.

1161. *Chairman*: There is my second point arising out of your previous answer: the Hill Cattle subsidies are temporary, are they not?—The Hill Cattle subsidies are now being extended for another seven years, so that for that period there will be quite a lot of money coming in. At the moment I believe the contribution is nearer £2,500 than £2,000, the figure I gave you last, and with seven years at that rate assured, another £14,000 or £15,000, can cover an awful lot of draining and sanding.

Only in one year, 1954, did we not receive the money, when the Minister did not require part of the subsidy being retained for improvement.

1162. But your whole scheme does depend upon the continuation of those subsidies?—After they have ceased we want the right to levy either a headage or an acreage charge on the commoners. There again we would run up against a snag; a lot of the bigger men do not bother to use the moors. They will have to pay on an acreage basis, and those who are using the moor will have to pay on a headage basis. It is not too easy to say how many head of cattle are on the moor at any particular time. But we have spent thousands of pounds on drainage by machinery. It is necessary to employ a man to keep those outfalls or drains open, and there must be some fund available to keep this work going. After the first world war, about the 'twenties, a voluntary committee of land-owners and commoners did some draining; within about three years the drains could not be seen, they were all pushed in and gone. Now the drains have been done properly with modern machines, and I think there must be some provision made for raising funds to keep them going.

1163. *Professor Stamp*: Is the capital equipment, the machines to which you have just referred, the property of the Association?—No, Sir. We contract with the A.E.C. at so much per hour. I am not sure what they are charging now, something like 34s. an hour.

1164. Has the Association any capital equipment or capital assets?—No.

1165. *Mr. Morris*: Are any of the drains or the outfalls fenced?—No.

1166. *Mr. Evans*: Would the fund you are talking about be required for future maintenance?—Yes.

1167. On the other hand, at the end of another seven years of the Hill Farming subsidies you would expect to have a fairly big acreage of moorland in good fertility and well drained?—I think in another seven years, at the rate we have been going, there will be another 1,000 or 2,000 acres sanded. We have got round the worst of our drainage problems, but there is a much disputed one, Roughtor Marsh. We put in an application to drain Roughtor

Marsh, which we hope to show you tomorrow. It is an area of between 100 and 150 acres, a graveyard for cattle on the moors. Within the last fortnight one farmer has lost twenty sheep there and another one half-a-dozen. It has been a bone of contention for some time. We wrote to the Wadebridge R.D.C., who are the water undertakers there, and asked them to meet us on the spot, which they did, and we had a second meeting at Captain Hall's house, Hamatethy, to ask them if instead of our draining, which they did not want, they would fence the worst area. They have refused. They wrote, I think to the Minister, to know whether we had any power to drain our own bogs, and he told them that we had as long as it was not in a defined channel. And then to our surprise we get a letter saying that we have to go through all the drill under Section 194 of the Law of Property Act, 1925—notice, this, that and the other—which means probably two years before we can get the work done. Now, who is to come first, the commoners or the rural district or the water board? And if the water board are claiming rights because this bog is rather near the source of the De Lank river, are they to be allowed to prevent commoners from saving their stock, by saying: 'You must not touch that bog', without offering to fence or do anything?

1168. Is anybody likely to object to this?—I think if we go before the Minister the water undertakers certainly will. And the area has to be decided—we are a watershed for two other water boards. The commoners want to know whether they are to go on suffering because somebody now suddenly thinks: 'We would like the De Lank water supply', and if so, on what terms and by whom is it to be decided whether the land is fenced or not? In Cornwall they seem to like their water with a few dead sheep in it, but in Dartmoor they fence the gathering grounds. I can give you six cases in Dartmoor, but here—you have probably seen a very nice photograph of what is in this particular bog. Somebody went out and had a photograph taken, and a Bodmin paper wrote a very interesting article on it. It is in a shocking state now.

1169. We cannot go into individual cases.—No, but I wanted to give it

as an example of what somebody has got to have authority to deal with.

1170. You think Section 194 is too complicated as it stands?—Today, with Section 194, the trouble is the phrases 'for the benefit of the neighbourhood' and 'the health, comfort and convenience of the inhabitants'—what is 'neighbourhood' today? We took this up at a Ministry inquiry on the A.30 road; you may as well say Paris is in the neighbourhood as it is only 1½ hours' flight from here. And what does 'inhabitants' mean? Here is an area with no inhabitant within miles. This place is in the middle of a moor. How can you apply 'for the health, comfort and convenience of the inhabitants'? The wording is all out of tune with present-day conditions. That is one of the questions which has to be solved. This business of Roughton Marsh is one of the very sore points with the commoners at the moment.

1171. I think some of my questions you have dealt with incidentally. You mentioned that the lords of the manors exercise shooting rights generally, mineral rights, and so forth?—I can speak for most of the manors, particularly my own. We have let the shooting rights on a seven years' lease. The mineral rights have been let up to two years ago, frequently to different licensees; sometimes they have been let in four parts, sometimes as a whole manor. The English China Clay Company owns quite a bit of the mineral rights in Cornwall, and I think all the manors round Bodmin have let snipe pits. In the old days—I have here two old rentals of 1863 and 1888—you will find all sorts of odd payments for mooring cattle, which means that the lord took in other people's cattle and charged them a rent.

1172. Presumably in those days the moors were under-grazed?—I should think, from the records I have been able to dig up, most of the moors 100 or 150 years ago were stocked with a small type of sheep, which were reared on the various hills and their wool was shipped from the ports, Boscawen and so on. Then the ponies came for the pits, and next farmers went up to Scotland and brought down Scotch sheep and black cattle. On the moors now there is every sort of cattle, black cattle, Highland cattle, Herefords and so on,

and with the Hill Cow subsidy I have no doubt we shall see more.

1173. Do you think the moors are over-grazed now?—No; we have had no complaints of over-grazing.

1174. *Sir Donald Scott*: Have you many sheep on these commons?—I should think about 5,000. The present stocking is estimated at 4,500 to 5,000 bullocks and about 5,000 sheep. That is our estimate, which is compiled I think from the Hill Farming subsidies.

1175. *Mr. Evans*: Would the mineral rights be of considerable value, or not?—The most rent I have had for 3,000 acres is £300 a year, rising to £500. The Ministry of Supply worked the land once or twice for wolfram, when wolfram was scarce. There is mineral there, but it is very expensive to get out.

1176. *Mr. Arnold-Baker*: Is there any gravel?—When they had a dredge after the first world war, they washed up a lot of gravel which was subsequently sold, and there is china clay in certain places, but it is not worth very much.

1177. *Professor Stamp*: Is there a possibility, with new methods of working, that some of those mineral rights, particularly china clay, might be very valuable?—Yes, if only we could get some way of finding where the lodes are and sink shafts, instead of having to drive through yards of granite.

1178. *Chairman*: Can you tell us something more about the common rights, how they arose and what sort of rights they were?—I have traced some of the manors in the Domesday-book, Fawton-trenay-St. Neot as Fawntone; Glynn as Glin; Lancescarffe as Lancharet; Penpont is the same; Trebartha as Tribertin; Hamateithy as Homotedi; Newton as Niwetton; and Treveniel as Trewiniel. So eight of the manors are mentioned in the Domesday-book. They are very old manors.

1179. How did the common rights develop there? Were these areas all manorial waste?—So far as we know, every one. Of the other manors of which I have traced some record, one of the larger ones, the manor of Blisland, was granted to an ancestor of Sir John Molesworth St. Aubyn by Henry VII, and the three manors of Barlandew, Cassacawn and Trehudreth were

formerly part of the Morsbead estate. I cannot find them in the Domesday-book, but I think we can take it that they were all wastes of manors which were in existence prior to Richard I.

1180. Since then have there been inclosures?—A great many up to the Inclosure Acts. The one I know most about, and have been able to trace, is Penpont, which came down practically intact to 1790, when a gentleman called Edmund Bennett was blessed with four daughters. He sold off all his farms together with rights on the West Moors, but he gave his daughters a quarter-share each of the manor, and the shares remained from 1790 until 1920 in the descendants of those daughters, and in fact two quarter-shares still remain within the family.

1181. But was there some inclosure at some time?—I think probably before the Inclosure Act they inclosed what they wanted, because we know of a case on the West Moors where a big landowner inclosed a farm called New Park, and he lost all of his rights on the West Moors. The same thing happened on some of the other manors.

1182. Were all commoners freeholders before 1925?—One of the rent rolls says 'high rents', another says 'conventional rents', another I found was 'admitted' to the manor—'admitted' must have meant a copyhold tenancy. I have only had one 'admission' produced to me with a deed, all the others are called 'high rents' or 'conventional rents', and they were very badly in arrears. In 1863, they collected £7 for arrears and the rents were £183!

1183. Are these rights appurtenant or appendant or in gross?—Appendant. A solicitor who acted for several of them described them at a meeting in 1893 as: 'common pasture appendant'.

1184. Are there rights of pasture only?—On most of the moors there are turf pits; they are not used very much now, and by consent the lord of the manor, anyway of Penpont, has allowed the commoners to take sand and stone for repairs only, not for new buildings. On Davidstow Moor they cut the rushes for thatching, and we have had to stop our neighbours, who have no rights, from coming up from Tintagel and cutting rushes.

1185. Now we come to the agistment scheme, to which you refer in your memorandum. I take it that the scheme is entirely founded on the fact that the land is under requisition?—Yes. I wondered if I might just go a little into that and show you the trouble we have had. The requisitioning goes back to the war period, of course, but I have a note of what took place round about 1948 and 1950, before the scheme was devised of requisitioning to keep the fencing up—because that is what it amounted to. There were various meetings; the matter was discussed with the Ministry of Agriculture representatives, Land Commissioners and all sorts of people, and in the end, between us, requisitioning was thought to be the only solution. At the moment we have only two years, or up to the end of 1957, left under our agreement. The agreement between us and the A.E.C., whereby we pay them a rent equivalent to what they pay us, will expire at Christmas, 1957.

1186. Then the whole of this scheme simply drops?—As soon as the requisitioning finishes, and I understand the Government want to finish requisitioning. What we hope is that it will be continued until your Commission has made its recommendations and they have been implemented by Parliament; otherwise we are going to be in an awful difficulty.

1187. You would just have no legal authority at all?—We would go back to where we were before 1948.

1188. My next question is very closely associated. What legal effect has Clause 16 of the agistment scheme, which is the only sanction you have under it?—When the requisitioning finishes we have got no power.

1189. At the moment what can you do?—Only threaten them that any contract will become null and void, and the stock-holder can be refused permission to agist stock. We have only had one bit of trouble on one of the moors, where we tried to unstock a month every year for manuring; one man persists in stocking during that period. When he cannot get in the gates he cuts the wire, but I think it will cure itself in time. The A.E.C. did not think it was worth suing him for trespass. They could have done so, but these actions are very complicated and

expensive, and we have tried to avoid legal proceedings as much as we can.

1190. Apart from action for trespass, Clause 16 of the scheme is your only remedy at the moment?—Yes, to keep them outside the scheme.

1191. I now come to the meetings of the Association. Do I understand from your memorandum that at a meeting each lord of the manor and each commoner has one vote?—Yes, that has been so in the past. There has been a question once or twice whether it is quite fair that a man with a 400-acre farm should have the same voting power as a man with 20 acres.

1192. Do you ever in fact have to take decisions by majority?—No, we have no trouble at all. In the last few years they have been re-electing the Executive Committee *en bloc*. There are committees for the six areas, whose chairmen and secretaries are *ex officio* members of the Executive Committee. We ask for nominations from the six different moors, and the bigger ones get two or three representatives and smaller ones a couple on the Executive Committee.

1193. It works out all right in practice, though in fact there is no legal basis to it at all?—None whatever, but it does work very well. 15 or 16 out of 20 attend the Executive Committee meetings about three or four times a year.

1194. *Professor Stamp*: Are your meetings definitely restricted to those who are known to you to be commoners or lords of the manor?—Yes.

1195. This I think raises the question of relationship with farmers in the neighbourhood who may not hold common rights or any other rights as lords of the manor. There is a suggestion in some of the evidence you have given us that there are differences of opinion with the county branch of the National Farmers' Union. Would you enlarge upon that?—The Farmers' Union are now supporting us fully on this. I attended a meeting of their Hill Farming Committee last week, and they had already gone into it pretty fully. I understand the Farmers' Union have sent a letter to your Secretary to the effect that they are fully in agreement with all our proposals.

1196. So far as the 'benefit of the neighbourhood' includes neighbouring farmers, what you are doing is regarded as for their benefit as well; is that so?

—Yes, we are friendly with them all. As far as I know, there is no jealousy. The bulk of the farms adjoin within half a mile of the different moors. For example, you will find a lot of the farms have rights on two, say High Moor and Buttern Moor, of the five or six moors that comprise the West Moors; then further along on Davidstow Moor you can almost tell which moors the farms have got rights on.

1197. Have you any cases of farmers in the neighbourhood purchasing commoners' rights if they have none?—No, they cannot do it, a right of common appendant cannot be sold.

1198. There is no sale of stints, in other words?—Several have tried, Sir. I had to stop one last year who advertised common rights to let. I had to write and tell him he could not do it.

1199. Does not that raise opposition from a progressive farmer who would like to have rights of grazing on the common?—We have cases, Sir, where it is got over; they nominally become tenants of a farm with grazing rights, and stock it. I think we have suspicions that certain tenant farmers who put stock on the moor do not own that stock, but we cannot prove it, and sometimes it is best to let sleeping dogs lie. But if there were any complaints from commoners that a certain farmer was over-stocking, it would be up to them to take action.

1200. It is much more usual to find that commoners have rights, which they do not see the possibility of using themselves? Do they then like to turn them into cash by sale or lease?—They have no right to sub-let.

1201. Does that mean that if commoners do not use their rights, it is the lord of the manor who scores every time?—If he likes.

1202. It is, from what you have said previously, quite conceivable that the lord of the manor, if he were an efficient farmer, would use all the grazing on the moors and eliminate the interest of the commoners?—He could and I think in the old days most of them did stock. They had their manor courts

every year and they used to beat bounds and so forth.

1203. *Chairman*: Would the lord of the manor have to leave enough grazing for the commoners? Unlimited stocking would be inconsistent, for example, with levancy and couchancy, would it not?—According to Halsbury's 'Laws of England' he has unlimited rights. If I might quote paragraph 801 from the section on commons in the 5th volume of the third edition of Halsbury, it says 'The right of the lord to have pasturage for his own cattle on the common is always one of the characteristics of a waste on which rights of common exist, and so long as it continues a common no prescription can deprive him of the right, nor is it dependant upon there being a sufficiency of common for the other commoners'.

1204. I would have thought that that meant that the lord of the manor is not stinted. If I might also quote from the same section of Halsbury, paragraph 800, '... the lord of the soil is owner ... of everything ... except such things as custom, usage, or grant has conferred on the commoners. So long as he does not interfere with the commoners' rights he may use the land and the produce thereof as absolutely as if no right of common had place on it.' I understand that the commoners' remedy against surcharging by the lord is by action. However, perhaps I might leave this and ask is any part of the land suitable for arable cultivation?—Yes, all the 800 acres that were requisitioned. Very valuable crops were taken off them. That is on red earth, not on the peaty soil, which is acid and sour. After the war this big arable area was re-seeded and since then I think 70 acres have been ploughed up, sown to rape and re-seeded. The soil and altitude of the peat are probably not conducive to good arable crops. On some of the peat moors there are very good patches which might be improved by re-seeding for pasturage. Last year 70 acres of brambles and big furze were cleared—there are two sorts of furze on the moors, the dwarf and the big old-fashioned one—and I think 40 acres is under contract to be cleared this year. That, with just a hit of manure and re-seeding as necessary, provides a very much improved pasture.

1205. *Sir George Pepler*: Are these improved places visited by picnickers

and people like that?—Very little. The main road goes through the moors, but the bulk of them lies rather a long way in from the road, and I doubt if a score of people go picnicking on them. I know a few youngsters who bike out to try and climb Rough Tor, Kilmar Tor and Hawk's Tor in the holidays. We get the usual cars pulling up at the side and just picnicking on the main roads, but otherwise there is very little use made. Rosecraddock Manor got an order controlling public access under the Law of Property Act, 1925, the reason being I believe that they wanted to stop the gypsies going there. I cannot trace any notice under the Open Spaces Act.

1206. *Professor Stamp*: In the map which we have seen, the areas we are discussing are discontinuous, and there are very large tracts within the general area of Bodmin Moor which do not come within your Association's responsibility, for example, all the higher points like Brown Willy. Is any of that common land or is it in private ownership?—No, it is private ownership. The old lord of the manor of East Moors, Mr. Rodd of Trebartha, or his grandfather, in about the eighteen-thirties or 'forties, leased two or three thousand acres at 1s. an acre. He gave long leases, I think for 90 years, on condition that the lessees put up their own houses. Those farms are on land formerly part of the moors, but not subject to common rights now. The Rodds owned a few common rights and farms between them, but now that they have died and the leases expired the farms are in different ownership. Then there are big moors like Twelve Men's Moor belonging freehold to the Duchy of Cornwall, which only their tenants, as far as I know, occupy. They came to the first meeting and decided that they were not public commons, and that is why Mr. Stanier, the Duchy agent, is not here today to make any representations. The two biggest blocks in private ownership I think are Twelve Men's Moor and Sibblyhack Moor; they are fenced, and amount to perhaps 1,000 acres.

1207. Quite a large part of that land in the heart of Bodmin Moor which is in private ownership is unfenced and is open to the public for access as if it were common, is it not? What I am trying to get at now is, following up Sir George Pepler's point of the

importance of public access for recreation, are there any areas in the moors of Bodmin Moor as a whole which are available for public access and recreation?—Yes, there are plenty of places where they could pull off the road.

1208. Have they legal right of access?—Not at the moment. I do not think any order has been made under the Open Spaces Act. And, remembering that this is one of the fastest and busiest roads in the west, I do not think a lot of people would want to pull their cars in there.

1209. But is there not a great attraction to go to places like Brown Willy and Rough Tor?—Rough Tor is now owned by the National Trust, Brown Willy is private property. Rough Tor can be reached after about 1½ miles' walk over the moor.

1210. What is the attitude of your Association to granting legal rights of public access?—We have no objection.

1211. Is your reason for that that only good can come, and that there is so much land that it will not matter?—We do not think it will worry us, or that many people will come. We have Dartmoor near, and the general public will probably go on to Dartmoor rather than come here and worry us. There are hardly any tracks over these moors.

1212. *Mr. Evans*: Would you be worried if you had the right to do quite a lot of fencing?—No.

1213. *Professor Alan Roberts*: May I revert to the question of improvement? Now that you are assured the continuance of hill subsidies for another seven years, how will you determine the next step in upgrading the land which was taken by the A.E.C. and cultivated in rotation, and also the land that you are improving by extensive sanding? Have you a projected scheme of continued improvement, and how do you determine what should be done next in what area?—Each of the six committees makes recommendations as to their year's programme. Some say 'We have got three more places we want drained'—there are one or two now under discussion, I think, on the East Moors—and others 'We would like another 100 acres sanded over that end of the moor'. With the sanding it is a little difficult because you have got to choose spots where the lorries can get in,

and one or two are rather difficult places to reach. Each area committee makes its own recommendations. They see the annual statement they get from the A.E.C. at Truro and say 'We have got £400 to our credit; all right, let us have £200 worth of sand'. The sand costs more now but we get a grant of 70 per cent. of the cost certain months of the year, and so it does not cost us too much.

1214. You have in fact got machinery for reviewing rival claims as to where to improve?—Yes. In the past we have spent money on things like grids. We paid the total cost of one or two ourselves, and we have contributed to the cost of others. We feel very emphatically—and I think the highways authority will probably back us up—that grids ought to be a national charge on the Ministry of Transport.

1215. *Chairman*: Are these grids in fenced areas?—Yes. On the Davidstow Moor where these grids are, the moor is fenced, and we had to put five grids to block all the roads leading into the area.

1216. Who did the fencing?—Under the law of commons all the adjoining owners must fence against the common. You might like to read the judgment, *Sir, in Coaker v. Willcocks* which we would like to see amended. That was decided in 1911. Since then the commonable animals both on Dartmoor and in Cornwall have been mainly of Scottish ancestry. They are well known as being very active and good jumpers, and it is going to be very awkward if a whole bunch of Scottish cattle get into a farm—as in the Coaker case, where it was found that the fences were good for keeping out the ordinary cattle, but not for Scottish cattle.

1217. This was a case where the owner was under a specific obligation to fence, was it not?—We have always treated the law as being that all farmers against a common keep the fences.

1218. That is not true of the rest of the country, is it?—The Dartmoor commoners also still rely on *Coaker v. Willcocks*.

1219. My point really was that the fences were in fact all put up by the neighbouring land-owners but you have put in the grids. You have not done this under Section 194 of the Law of Property Act?—No.

1220. *Mr. Evans*: I can see that the cattle grids and fences will contain the stock within that particular area, but does it in fact contribute a lot to safety? Once the road crosses the grid and is inside the area, you have still got all your stock wandering across it.—Yes, but before that the stock was wandering two miles away and getting on to the main roads. There were accidents there every year, and one or two people killed.

1221. *Chairman*: May we deal with this question of the A.30 now?—Yes, I will ask Major Hare to speak.—*Major Hare*: You appreciate that I am dealing only with the A.30 road and accidents involving vehicles and animals, not ordinary motor car accidents. I have here a map showing the accidents which have occurred on the A.30 road, which will give you some idea.

1222. On this map which is the area where the road goes through common land?—Practically the whole of the area is common land, Sir, the A.30 road going right through the middle of it. The places in which we have the most accidents are referred to in our memorandum, and I think you will find that they are all marked on the map.

1223. What is the distance involved where the main road crosses common land?—Twenty miles, Sir, roughly. That is from Bodmin to Five Lanes.

1224. *Professor Stamp*: Could we know what these large white pins on the map represent?—Those are all places at which the highways authority has erected signs, 'Unfenced road, Beware of animals'. Now we have another sign with a large cow on it. The pins all represent signs which have been put up, similar to those you find in the New Forest and places like that.

1225. I take it that it is the view of the traffic authorities that the road should be fenced all the way through?—Undoubtedly.

1226. Is that agreeable to the commoners?—*Mr. Peter*: We had a meeting last year with the Highway Committee of the Cornwall County Council, the police, the R.S.P.C.A., and two representatives of the Ministry of Agriculture. They saw the map which you have just been shown, and I think five or seven members of the Highway Committee fully endorsed our proposals, but they said they could not commit the Ministry

of Transport, The R.S.P.C.A. and the N.F.U. all support us—we have the full support of every public body concerned.

1227. Would it be the concern of the Ministry of Transport or of the county highway authority?—We say the Ministry of Transport ought to be responsible but they delegate their powers to the highway authority.

1228. *Mr. Arnold-Baker*: Since it is a trunk road, it would presumably be the Ministry of Transport?—Yes, but they have delegated their control to the local authority. The fencing, however, is rather an expensive job.

1229. *Mr. Lubbock*: Would the commoners not require cattle creeps at intervals, or other facilities for animals to cross from one side of the main road to the other?—Yes, in one or two places I think that might be wanted, but it is a very small matter. The main block of common land is on the right of the main road.

1230. *Professor Stamp*: Would the whole question be just the fencing of A.30 and the control of all side roads by means of grids?—That would be sufficient. There are not a great many side roads.

1231. *Sir George Pepler*: Would the type of fence be concrete posts and wires?—We have promised the Commons Preservation Society and another amenity body to let them approve the type of fence and the siting of it, and they have not made objection. We have had no objection to the scheme at all, except for the one lord of the manor I mentioned who wants to be paid for allowing us to fence.

1232. Does that mean that your stock would be confined to within a certain distance of the side of the road?—I expect that the planning authority would make us set the fence back a certain distance from the road. I think the Commons Preservation Society want to have a particular type of fence so that it will not look too bad. Six or eight grids will be wanted, and gates in one or two places.

1233. *Mr. Evans*: Is this a problem entirely separate from the recommendations you make regarding the fencing of commons generally? This is a particular problem affecting A.30?—Fencing does affect very seriously the question

of future attestation, which is a very big thing.

1234. I am suggesting that A.30 is a particular case where you hope the Minister will be responsible for the fencing, hut, in any future scheme which might arise out of recommendations made and adopted, the cost of fencing the commons generally would be the responsibility of whoever was taking part in that scheme? The funds for it presumably would not come from outside, say from the Minister?—On the A.30 we think the cost should be met by the Minister. But we have one other case now where it has been practically agreed to divide the manor of Hamatethy from the West Moors, and put in a shelter belt. We take it that that fence can be put up by the lord of the manor who wants it, or by the Association.

1235. *Sir George Pepler*: I understand on the A.30 the simple point is safety, a separate case from attestation and so forth?—It is primarily safety, but also it will bring us one stage further to the possibility of using the moors for attested stock, if we get the fencing.

1236. *Professor Alun Roberts*: Would I be correct in assuming, from the statement you made earlier that the bigger interests have withdrawn their stock from grazing, that that would be a reaction amongst the more progressive farmers from earlier attempts at upgrading to attestation?—No, I think they have not taken any interest for years, because after all keeping stock on moors entails a lot of riding, and so forth.

1237. And has the presence of scrub male stock deterred them?—Yes, in the old days; but I think it was that they did not like to put valuable stock on the moor, or they were not interested.

1238. Did you not say earlier that they had withdrawn their stock?—Yes. I should like just to digress a little about the trouble of attestation on the moors. Last year there was a public meeting at Bodmin where attestation was unanimously decided on. After that the East Moor commoners using the moor called a meeting and voted a hundred per cent. to get their farms attested. That is on an area perhaps of 2,000 acres. They thought: 'If we are all attested, then we can put attested stock on the commons'. When they inquired if that was so, the

answer was: 'No, there are other people with common rights who do not use the moor hut might do so, and therefore they must get attested too or undertake not to stock the moor'. The result is that the scheme is dropped at the moment.

1239. *Chairman*: Did you try to get the others to agree either not to stock the moor or to get their farms attested?—We have got to find out who they are first. That is the trouble we are up against. There happen to be three manors on that moor.

1240. This is another case where the problem is that you have not got any kind of register?—And no authority to make one. It has been drummed into our committee every year by the livestock officers of the south west area, that unless Cornwall and Devon become attested at an early date we stand the risk of not only having all the dud cattle sent down here, hut not being able to sell our own attested stock. It is a very serious matter. The present prospect is that North Devon, from a line from Barnstaple across to Somerset, will be fully attested. You are going to hear a great deal more about this, I think, when you come to take evidence about Dartmoor. They also want to be able to get all the adjoining farms attested. If our men are attested and cannot use the moors, the moors will not get used at all in the end. I think that definitely comes within your enquiry, and it is a very serious point.

1241. *Professor Stamp*: In the summary under your recommendation No. 2, you say: 'Such management powers to include the right of the Association to drain, plough and re-seed suitable areas, fence and keep existing fences erected by the Agricultural Executive Committee up, manure, plant windbreaks, and to make and enforce regulations as to stocking each year'; really there is no difference between that and the rights you would exercise if you were a freehold owner of the whole land, is there?—Not in practice.

1242. Is it not equivalent to saying that the Association should be recognised and have all the rights of a freeholder?—Yes, and particularly the power to enforce. We have done a lot by agreement over twenty years, hut it is the odd case which stands out, and we have done lots of things that we cannot justify legally.

1243. *Mr. Evans*: Would you then have to do your own fencing?—Yes,

I think so, subject to grants, but there again we get grants for these things. The Livestock Rearing Act is going to give a lot more in grants, and we were hoping the fencing might come under that. It might go a long way towards the cost of the A.30 fencing. Nobody knows yet whether the percentage which is going to be contributable towards fencing schemes under the new scheme will be the same as under the old, but we thought if it authorises a big grant, that, plus a contribution from the Cornwall County Council, plus one maybe from insurance companies, and commoners, would meet the few thousand pounds wanted to fence the A.30. I understand the percentage is not yet made public.

1244. *Professor Stamp*: If you were granted all these powers which you suggest under recommendation No. 2, do you not think you would then find opposition from other people in the neighbourhood? I am thinking now of the picnickers, the caravanners and visitors who supply so much of the wealth of Cornwall by coming down in the summer.—They pass us by. They go the other side of Bodmin. We may get a few odd caravanners, but if they get by Jamaica Inn they have got the moors to face, and they do not like doing that so much.

1245. *Mr. Evans*: Under the system of management as you set it out in your second recommendation, would you expect to increase your carrying capacity of stock very considerably over the next few years from the 5,000 bullocks and 5,000 sheep that you run at present?—The estimate my committee worked out last week was that since 1948 or thereabouts—anyway since the subsidies have been introduced—the stock on these moors has doubled at least. They think that is a conservative estimate, and there is no reason why it should not continue. At the moment it means that the stock on the moors is roughly one animal to two acres. If you eliminate the area of bogs and rocks, it is very heavy stocking for a common. On the enclosed portion, the Cardinham area, it has been as much as a bullock and two sheep to an acre. That shows what can be done. A bullock to an acre is a good standard for grazing generally, but a bullock and two sheep is I think their summer grazing average. It just shows what the soil will do if it is treated right.

1246. *Professor Stamp*: Have you any comparable figures of stocking for those enclosed areas which are privately owned in the heart of the moor?—We hope to show you tomorrow a private moor adjoining ours. It used to be Captain Hall's. Mr. Peter Throssell now keeps a very large herd of cows on what was rough moor thirty years ago but has been greatly improved.

1247. *Sir George Pepler*: I think you are aware that the Commons, Open Spaces and Footpaths Preservation Society put forward a scheme which seems to be rather parallel to yours.—Generally speaking, I think it follows the line of our own suggestions. I have read their proposals. I raised the question earlier whether there ought to be some appeal by a lord or a commoner to perhaps the Minister, if any awkward questions arose as to the quantity or manner of stocking, or anything like that—perhaps to the A.E.C. if they continue in power, for after all, they are the representatives of the Minister on the spot, and we work very closely with them. Generally speaking I think the proposals of the Society are on very much the same lines as ours, but we do suggest that all commoners' associations should be given much wider powers without having to refer to London every time on what are, after all, more or less domestic details.

1248. The proposed scheme would be a scheme like yours?—Yes. Here I think we have, after 21 years, one of the strongest bodies of commoners in England, strong luckily financially as well; most commoners' associations have no funds to do any fighting with, but I think we may say we have done an awful lot of good. We have had to cross swords, I am sorry to say, with the Forestry Commission twice. They once tried to block a right of way, and then they went and ploughed up twelve acres of our common at Hurstock. After due notice we pulled their fence down. We asked them to come and meet our witness in both cases. We had an old man who said he had known the place for sixty years. They said they were going to sue us, but we have not been sued yet.

1249. *Professor Stamp*: That raises a major question that I was going to put to you: what is the attitude of your

Association towards afforestation?—If they will play ball, so will we.

1250. I was not thinking so much of any difference between your Association and the Forestry Commission, but of the view of the Association with regard to the desirability of afforesting certain parts of the moors, either through the Association or by some other means. Would you consider it desirable?—The Forestry Commission have never approached us for anything. There is one scheme at the moment, near Crowdy Marsh. They want to put up a shelter belt, and to do that they are agreeing to buy from the Duchy of Cornwall a certain number of adjoining acres to give in exchange. That is the only forestry scheme at the moment that I know on the whole of our moors, except the place they tried to appropriate down at Hurstock.

1251. But has your Association itself looked into the question of using some of the common land for the growing of trees, as a commoners' matter?—I think it is of more use as common for grazing. The big tors like Brown Willy are privately owned, the rest of it is more or less ordinary open grazing common. All of it is improvable land, and I think more suitable for improvement. Even on Highmoor there is as good grazing on the top as there is in the valleys.

1252. *Professor Alun Roberts:* Would not a sprinkling of shelter belts of your own design commend itself?—I think some shelter belts might be

of use. At the moment, you realise of course, that these moors are stocked winter and summer. All the Scottish cattle and sheep stay out all the year round on the moors; the cows are put out in the summer.

1253. *Professor Stamp:* You talk about summer carrying capacity; what is the all the year round carrying capacity of the unimproved moors as they are at present?—I should say pretty well a half to two-thirds of the figures I gave you, which are taken from the Hill Cattle subsidy figures.

1254. *Professor Alun Roberts:* I do not know whether it is the practice now to send the ewe lambs from moorland farms for wintering in their first winter? If that is so, do you find a tendency to over-stock in winter to the detriment of summer grazing, in order to avoid wintering charges elsewhere?—Mr. Perry has a lot of sheep, perhaps he would like to answer that.—*Mr. Perry:* It is extremely difficult to get wintering in any case.

1255. It has never been traditional, has it, to send ewe lambs away for their first winter?—Not on Cornish moors; on Dartmoor I think it has, but not on the Cornish moors which are not heavily stocked with sheep.

Chairman: Are there any further questions? Then, thank you very much indeed, Mr. Peter, we are most grateful to you for the assistance you have given us, and to everybody else who has helped us this morning.

(The witnesses withdrew)

Memorandum of Evidence Submitted by Mr. George Sandercock

MANOR OF PENPONT AND TREGLASTA, CORNWALL

I am portreeve and also one of the lords of the manor of Penpont and Treglasta in the County of Cornwall. This comprises about 3,500 acres of Moor and common lands. It is owned by four lords of the manor in four undivided shares subject to the rights of grazing and in some cases turbary (peat) of about 150 commoners. My father and grandfather were also portreeves of this manor since 1837 and for the information of the Commission I give you some particulars of the customs, etc., carried on during that time.

It was the custom always for the portreeve and commoners to impound all cattle found on the manor belonging to persons having no right and a fine was paid to the lords of the manor. It was always the custom to allow the commoners to stock only to the extent of what the land they occupy having common rights could

reasonably maintain and winter with its own produce. Many holdings adjoining the commons have no right of common, such rights as they may have originally had having been merged in extra land being taken in from the manor and with agreement with the lords. In other cases rights were kept by the payment of a small high or chief rent to the lords of the manor.

The position now is on this manor, and I think it can be taken as pretty general, that with approximately 150 farmers with common rights to their holdings only about 40 to 45 per cent. actually exercise those rights. Many of the larger farmers 'down the hill' and the largest holders of common rights have not up to now exercised them but could do so at any time.

The lord of the manor is also entitled to graze the manor with his own cattle to an unlimited extent, and also to dispose of all the grazing surplus to the rights of the commoners in so far as they exist. This has been done in respect of this manor up to a year or so ago. (See *Arlett v. Ellis* (1827) 7 B and C 346 per Bayley, J.) The lords also lease all the sporting rights, minerals, stone, sand or gravel.

Now the position might arise, with the tremendous improvement of these lands by fertilizers, drainage, etc., during recent years that all the farmers having rights of common and also the lords might exercise their rights and in such circumstances conditions would tend to become very difficult and chaotic unless some control is foreseen.

There is a tendency for commoners now to agist cattle far in excess of their rights in order to obtain the various subsidies. This is absolutely illegal and it seems to me should be borne in mind in favour of some method of control.

Examination of Witness

MR. GEORGE SANDERCOCK

Called and Examined

1256. *Chairman*: We are most grateful, Mr. Sandercock, for the note which you have sent us. You heard the evidence by the Cornwall Commoners' Association this morning. Is there anything you would like to comment on?—*Mr. Sandercock*: I represent the interest of the lords of the manor and Mr. Peter has covered most of the points, I think, from that angle. There is no comment I wish to make on his statement and nothing further in that respect I wish to add to what he has already said.

1257. One of the points you make is that of about 150 farmers with common rights only about 40 to 45 per cent. actually exercise them?—That is the position at the moment.

1258. Is the number going up?—It will go up. At the moment in the parish of Altarnun and I think in smaller adjoining parishes 40 to 50 per cent. at present exercise their rights, but others, and perhaps particularly those living a little further in the country, including even some of the bigger farms with extensive grazing rights, have not for many years exercised these rights at all but they can do so at any time.

Many of them have exercised their rights of turbarry since that time. My point was that with the improvement of the common lands with drainage and fertilisation and with the subsidies of £18 a cow and calf those people are just beginning to take notice and the time will arrive when their stock will increase. It is coming to be an economic business.

1259. Some of our witnesses elsewhere have suggested that if a person has not exercised his common rights for thirty years they should be regarded as lapsed.—That is a legal point, but common rights in my opinion are vested in the land, not the person. I do not think a farm can lose its common rights through the methods of farming of a particular occupier.

1260. Not at the moment, but the suggestion was that the law should be changed; if the owner of Black Acre for thirty years has not exercised his common rights should that farm have any common rights?—I would not personally agree that the rights should be lost then. An owner may have let a farm with common rights to a tenant.

The system of farming up to now may be such that the tenant has not used the common but when the farm becomes vacant again another tenant may come in and say: 'We will exercise the common rights because they are becoming more valuable'. I do not think they should be taken away. Many of the most active commoners today did not exercise their rights 10 to 20 years ago. In those days there was not so much incentive to do so.

1261. Will you then not still have the trouble that if you have any sort of organisation in which a committee is empowered to improve the land at the expense of the commoners and that is done at the expense of the active commoners, then the passive commoners will come in and get the benefit from it?—Under the present conditions they can do that but I think if you put an association in a position of authority they will govern the thing by a majority vote and that would cover that side, although there may always be the possibility of the big ones eating out the little.

1262. The Cornwall Commoners' Association are peculiar because they have had funds from elsewhere and have never levied funds from the commoners. The suggestion made to us by other people in London has been that the necessary funds for the improvement of a common should be obtained by the levy of a cess upon the commoners themselves.—Yes, if I may take it that it would mean on commoners claiming rights irrespective of whether they used them or not.

1263. And you also agree with Mr. Peter that the lord of the manor is entitled to graze all his own cattle to an unlimited extent?—I do.

1264. I do not think that is the law as we understand it. I think if you graze to such an extent that you deprive the commoners of their rights then clearly they can sue you.—Providing there is sufficient grazing on the common for the rights of the commoners in so far as they exist the lord of the manor can take everything else for his own. The essential point is the rights of the commoners 'in so far as they exist'. Many people stock the common far in excess of any common right.

1265. Is that so?—There is no doubt about that. It does happen, and we, as lords of the manor, have not objected to it.

1266. Does that happen through the rule of levancy and couchancy because the commoners are in fact keeping more cattle?—That may cover it.

1267. It is only that in modern conditions they have increased the amount of cattle that may be depastured on the common but not gone beyond their common rights?—From my point of view as a layman I should think they have gone beyond their common rights. Control of grazing was always exercised by the lord of the manor, who used to charge a fine on those stocking without a right and on those stocking in excess, and the cattle were impounded in the manor pound. But for the last fifty years that power has never been exercised.

1268. Are they letting other people's cattle get on, or hiring cattle from outside?—I have no evidence of that. Actually, we have heard rumours, but a commoner has no right to agist other people's cattle.

1269. *Professor Alun Roberts*: If the common was for years seriously undergrazed in summer to its long-term detriment, would you be prepared to re-assess the right of agistment in the interest of the land? I mean by bringing in more cattle on an annual seasonal charge in order to keep up the quality of the common. Undergrazing in the long run can be as damaging as overgrazing.—Yes.

1270. If that set of circumstances were to arise would you be prepared to have a flexible system?—Yes; without prejudice to the rights of the lord of the manor I do not see why that should not be.

1271. I am suggesting that in the circumstances I have defined it might be worth while to create extra rights of agistment in order to maintain the grazing quality of the common?—In such circumstances where there would be surplus grazing, that would be the property of the lords of the manor, which they could sell. This has been done on the manor for several years.

1272. *Chairman*: The creation of extra rights of agistment would in fact conflict with the rights of the lord of

the manor, would it not? The lord of the manor has the right to put on extra cattle? Anything left after the commoners enjoy their full rights belongs to the lord of the manor?—If the commoners want to extend and exceed their present rights it is entirely a matter for discussion and agreement with the lord of the manor.

1273. *Professor Stamp*: We were told this morning that there were about five lords of the manor who are really active in this area. Are there a number of others who are concerned?—Yes. I think Mr. Peter meant five that were active in co-operation with the Commoners' Association. There are other lords of the manor who are not particularly active in the matter. I am a lord of the manor and I am portreeve as well. There are four joint lords of the manor for our manor. Lord St. Germain's and Captain J. T. Coryton are not particularly active.

1274. Would you say there are some lords of the manor who really are playing no active part at all at the present time?—I could not answer that, I do not know the whole county and what lords of the manor there are. As far as it comes within my knowledge most of the lords of the manor are co-operative with the Commoners' Association.

1275. I find it a little difficult to frame this question, I am sure you will not take it wrongly from me, but we have been told in other areas that the remaining rights of the lord of the manor are really worth very little, and we were given one case where all the rights of the lord were purchased for the sum of £100. Would you regard these rights in this part of the world as valuable?—I should regard them in that light as valuable because there is quite a lot of difference in manors, in manorial rights, and in what they refer to. I suppose there are manors which comprise village greens and that kind of thing with no particular value at all, but in the case with which we are dealing where 17,000 acres of land have been improved year by year, it stands to reason that, while I should not be able to assess exactly the value of any lordship of the manor, it would be substantial. I would regard it as something worth while.

1276. Have you any means of assessing the actual value of the rights of the lord

of the manor?—In a general way I can assess the right of the lord of the manor as to his grazing of cattle on the moor. If a lord of the manor now came in on the Manor of Penpont and Treglasta with 100 cows eligible for the subsidy payment and if they had a reasonable proportion of calves they would bring in a fairly good annual income. In addition to that he would have his mineral rights which on that manor have worked out somewhere about £300 a year. He would have his sporting rights which have been sold for generations for about £60-£70 a year, and there are various other items, ground rents and other things. I would regard the total capitalization as something fairly substantial.

1277. So that if it was proposed that as a general principle the rights of the lords of the manor should be purchased either by the State or the local authority you would regard them as something of quite considerable value?—Yes.

1278. *Sir George Pepler*: What do you mean by ground rents?—Buildings on the manor that have been sold. The building in the case I have in mind has been purchased but the lord of the manor has let the site on which the building stands and the ground rent is something like £5 a year.

1279. It would not be on the common?—It was on derequisitioned land from the Air Ministry on which the common rights have been extinguished.

1280. *Professor Stamp*: Do you as lord of the manor get any payment in the way of way-leaves from the Postmaster General and so on?—Yes.

1281. *Chairman*: Would you tell us what a portreeve is?—It is a very old English office and I have carried it on. There is a notice of 1876 when the portreeve and the lords of the manor and the tenants or commoners used to heat the bounds. I think a portreeve is a representative of the lord of the manor, and is appointed by him.

1282. *Professor Stamp*: You do not have anything equivalent to the manorial courts, do you?—We used to right up to about twenty years ago. A manor court was held each five years for the collection of chief and high rents payable to the lord of the manor. These were very small rents, about 1s. to 5s. per annum, and it was the custom

then to have a dinner in one of the local inns and collect the rents. As long as the rents met the cost of the dinner the high lords were very well pleased.

1283. *Mr. Morris*: You say in your memorandum:—

‘It was always the custom to allow the commoners to stock only to the extent of what the land they occupy having common rights could reasonably maintain and winter with its own produce.’

When did that lapse?—That was always the principle, though I am informed that it has altered since, but I

have never had any evidence of such alteration. It was an old principle that a commoner could stock in so far as the land in which rights were vested could reasonably maintain and winter with its own produce.

1284. And no control is exercised to-day?—I think that has altered somewhat today, and by courtesy of the lord of the manor, with modern conditions and modern farming. That rule goes back to 1837, and the same land today is capable of carrying a larger amount of stock than it used to be.

Chairman: Thank you very much, Mr. Sandercock.

(The witness withdrew)

Examination of Witness

SIR JOHN MOLESWORTH ST. AUBYN, BT.

Called and Examined

1285. *Chairman*: Sir John, are there any observations you would like to make as a lord of the manor, and as the person who had a lot to do with bringing into being the improvement schemes on Bodmin Moor?—(*Sir John Molesworth St. Aubyn*): There are two points that I would just like to remark on. One was the question of commoners—and perhaps also lords of the manor—who have not made use of their rights. It seems to me that one of the answers to the difficulties might be that if these commons become more valuable—which we hope and expect—and people want to exercise their rights, there should be some arrangement whereby on payment of a certain sum they could then come in. Otherwise you might well exclude a tenant who has not used them, as Mr. Sandercock said, and the farm could lose its rights for all time through no fault of the owner or possibly of the lord of the manor. It would be only right, it seems to me, that if the rights are reasserted there should be some arrangement whereby a proper and fair payment to bring the claimant on a level with the others who have made the improvement should be permitted.

1286. It is a case of buying yourself in, as in a club?—Yes. The other point I was going to make was in answer to the question about other rights of the lords of the manor. In some

cases, particularly in Cornwall, they are extremely valuable because there are clay rights. I own clay rights which are valuable and it could easily be ascertained, I am sure, by the death duty people what they are worth if we had to be bought out. There are other rights, such as way-leaves, which I also own which are not very large, but I would think that the lord of the manor's interest could under certain circumstances be very valuable, as I say, with regard to mineral rights. A few years ago on Bodmin Moors there was a question that I was interested in of utilising peat in a very big way for some industrial purpose. I believe, in fact, the project has been set up in Ireland and is a very big financial concern and presumably valuable to the lord of the manor if it is on common land.

1287. *Professor Stamp*: The value of those rights is, in fact, assessed for probate purposes?—Yes. The rights of the lord of the manor are assessed for death duty purposes.

1288. *Chairman*: Have any commoners got rights of turbary in respect of the peat you referred to?—Yes, commoners have rights of turbary.

1289. Do they exercise them?—On our commons I only know of one place where they are actively used, but I do not see a great deal of the commons. I think the commoners burn a certain

amount of peat themselves and I know of one stack which I think very probably is sold, but that is possibly the only one and not normal at all now.

1290. Has a commoner with a right of turbary any right to sell peat?—I do not know. I suppose not, because it belongs to the lord of the manor except for the commoner's own use.

1291. *Sir George Pepler*: If a big scheme dealing with peat such as you referred to was introduced, as lord of

the manor you would have to allow some turf to remain for the commoners' rights?—That question at once began to arise with the project proposed and if it had gone any distance I should have seen the Commoners' Association about it. Obviously, if you are going to disturb a big acreage you have to make some allowance for the commoners' rights of grazing and turbary.

Chairman: Thank you very much indeed, Sir John. We are most grateful to you.

(The witness withdrew)

Memorandum of Evidence Submitted by the County Planning Department, Cornwall County Council

The Cornwall County Council, as planning authority for the whole of the administrative and geographical county in conjunction with central Government Departments such as the Ministry of Housing and Local Government, Ministry of Agriculture, Fisheries and Food and the Forestry Commission, is vitally concerned with the proper use of all land whether it be for agriculture, forestry, public recreation or building development. It considers that in the national interest it is important all land should be appropriately utilised to its maximum capacity.

It is known that there are extensive areas of common land on the Bodmin Moor and that there possibly are others in the vicinity of Callington, the St. Austell and Camborne-Redruth districts as well as in the Lizard and Land's End peninsulas.

The County Council as planning authority considers that as a first step it is most important for arrangements to be made to ascertain the location and present use of all common land and the nature and extent of all existing rights appertaining to such land. On the means of doing this they have no observations to make except that it clearly calls for legal as well as technical advice to be available.

Following collation of this information suggestions can be made by the local planning authority as to what changes in existing use are considered to be desirable.

Existing legislation would appear to need strengthening in order to safeguard the rights both of commoners and the public at large. With regard to the commoners, there is danger that through apathy or lack of organisation encroachment and loss of rights can occur. In the case of the public at large it is frequently very difficult to ascertain what common rights, if any, exist and where acquisition is involved, the negotiations are extremely protracted.

It is thus considered desirable that, consequent to the survey referred to above, all titles should be registered and an organisation set up to administer all questions relating to common land.

Examination of Witnesses

MR. H. W. J. HECK, Dip.T.P., P.P.T.P.I., M.I.Mun.E., and MR. A. J. LANYON, M.A.,
on behalf of the County Planning Department, Cornwall County Council,

Called and Examined

1292. *Chairman*: We are very grateful for your note, Mr. Heck. The only point which I have to raise is on the question of getting what I might call a register of

commons including also a register of common rights. Have you attempted to make a survey, apart from a register, which would be a very large job?—

Just a tentative approach, that is all. We recognise that in Cornwall there is a great deal of common land but knowing the size of the job we have really stopped short at the first hurdle. We feel that it should be left to the Royal Commission to devise ways and means of getting information because we have come up against snags right at the start. One is the difficulty of determining what is common land, of deciding whether a particular piece is common.

1293. Have you any idea of what the area is in Cornwall?—We know it is upwards of 15-16,000 acres but beyond that we do not know with any exactitude.

1294. But the Bodmin Moors themselves are 17,000?—Yes, and we think there are some commons outside Bodmin Moor.

1295. Has the planning authority not provided you with funds for making some sort of survey?—None at all. We have been very fully occupied since the coming into operation of the Town and Country Planning Act, 1947, on the 1st July, 1948, in setting up an organisation and dealing with the immediate task of preparing a county development plan. That, of course, was prefaced by a series of surveys, but we have not been able to take into account such matters as common land.

1296. Have you seen the survey report made on the Cambridgeshire commons?—Yes.

1297. Would it be possible to make something like that in Cornwall without too great an expenditure?—With great respect, may I remind you of the size of Cornwall as an administrative county of 860,000 acres. Cambridgeshire, I suppose, is analogous to one of our rural districts in area.

1298. *Professor Stamp*: In your survey of Cornwall for planning purposes, you had to demarcate your actual access areas, did you not?—We are in the process of doing that now, of demarcating open country.

1299. Do you find it possible to link that up with common land or are you just showing the unenclosed moorland, and so on, as access areas?—The latter is actually what we are doing, mainly on the coast where the population is most interested and where we think the public would want to have access rights.

1300. Do you think that you could prepare the map of access areas simultaneously with the ascertainment of common rights where such rights exist in those areas?—I think it could be done but I feel hesitant to suggest that the county council would be prepared to do it because at the moment we are, of course, subject to the pressure of economy. The staffing question is a very acute one. If it became necessary, of course, as a result of this Commission's findings then that would alter the position altogether.

1301. Am I right in thinking that your maps are going to be displayed showing (a) the footpaths, and (b) the access areas, and to invite public comment?—Quite correct. That is precisely what will happen. The footpaths, of course, have been delineated already. We have almost completed the work for the whole county at the draft map stage, and are starting on the provisional map stage.

1302. You are showing footpaths giving an opportunity for any objectors to put forward their objections. Do you think you could, in mapping access areas, indicate presumed common lands in the same way and ask for objections?—Yes, I should have thought so, particularly as most of the known common land will be shown as 'open country' on our review map.

1303. Apart from the Cornish coast—everybody knows its attraction—we have been assured that visitors to Cornwall have little or no interest in moors such as the Bodmin Moors for access purposes; would you agree with that?—By and large, yes. The popularity of the moors is on a very much smaller scale than that of the coast. I do not think one can compare Bodmin Moor with the Peak District, for instance.

1304. So, broadly speaking, you would agree that if the A.30 were fenced where it passes through Bodmin Moor there would not be objection from the point of view of access and amenity?—I should think it is most unlikely.

1305. What about other areas? We have heard a great deal this morning about Bodmin Moor but there are many other moorland areas—the Lizard district, for example. I know you are familiar with the Land's End area, is the same true there?—By and large, I should have thought so. The public

may perhaps have an inclination to wander a little more on the Lizard, but then they have usually got an objective, a short cut to a particular cove, or something of that kind.

1306. In other words, if the coastal areas are, shall I say, preserved for amenity purposes and access, the public requirement 'for air and exercise'—the usual phrase—would be satisfied?—I should have thought so.

1307. *Chairman*: In our tentative list of commons in Cornwall I find the acreage given is 18,737. Would you think that is an under-estimate?—I would put it in my own mind as between say 15-20,000, so I should think that is possibly about right.

1308. *Dr. Hoskins*: That only leaves about 1,700 acres for the whole of the rest of the commons in Cornwall. Can that possibly be correct?—I should have thought it was higher, perhaps 3,000 acres.

1309. Have you in the county records the inclosure awards relating to commons elsewhere in the county?—Yes, we have, and from them we have started to arrive at a rough estimate of the commons outside Bodmin Moor.

1310. *Sir George Pepler*: In your survey of open spaces, playing fields, and so on, if you knew a village green was used for cricket and games would you enquire whether that would be a common?—Yes.

1311. *Chairman*: Is there any demand in Cornwall for the use of common land for development?—Yes, on a relatively small scale. There are several instances. I have Mr. Lanyon with me from my staff. May I refer to him? He can expand what I have already said and give one or two practical examples.—*Mr. Lanyon*: The case that comes readily to my mind is Gwithian Towans, near Hayle, where it is alleged common rights exist. It is an area on which an explosives magazine has been established, and to the best of my belief when it was established many years ago no objections were raised. There is a possibility of it being extended now and it is suggested that the existence of common rights is a reason why it should not be. On the other hand, so far there have been no

objections to other forms of development taking place on that area of wasteland.

1312. It is just waste land?—It is not grazed at all. It is an area of sand dunes chiefly. It is alleged by people living in the area that common rights exist but whether it is true or not I do not know.

1313. Do they think it should be kept as an open space for 'air and exercise'? It is perhaps a little difficult to have air and exercise in the neighbourhood of an explosives factory!—Yes, it is. I think they do not want the explosives depot to be extended, and that is the real reason why the question of common rights is being raised.

1314. Is there anywhere else where building development is going on?—There is one case in the Liskeard Rural District where an area of six acres of common land was required in connection with a water undertaking. The commoners, I understand, in that case, were agreeable to the land being inclosed but under the Inclosure Acts the local authority had to acquire and exchange an equivalent area of inclosed agricultural land which quite apart from the cost of acquisition involved fencing also, to the tune of about £600, because the farm from which the land came was attested. Those are the only two cases which come readily to my mind at the moment.

1315. *Professor Stamp*: We are told that in certain areas good agricultural land is being taken for housing because of the great difficulty in acquiring poor common land, which is probably much more suitable. This is said to be because it is common land and the procedure for acquisition is very difficult in cases of that sort; have you had experience of that?—*Mr. Heck*: I think, by and large, the answer to that is that the common land in Cornwall, as we understand it, is not favourably placed in relation to the existing centres of development, or potential centres of development.

I might add one point here. I have had a letter—I will hand in a copy*—from the Secretary of the Royal Institution of Cornwall indicating that his Institution, who have had a copy of the statement

which you had from me, are in entire agreement with it. That Institution would be concerned with the archaeological, historical and aesthetic points of view affecting common land. They

wanted me to make their attitude known to you.

Chairman: Yes, thank you very much. We are most grateful to you for coming along.

(The witnesses withdrew)

* The letter read :

11th May, 1956.

DEAR SIR,

I have been requested by the President of the Royal Institution of Cornwall to express to you the Institution's interest in the matter of common land in Cornwall, a subject now under review by a Royal Commission. I have been asked to state that the Council of the Institution fully agrees with your proposal that a comprehensive survey of the extent of common land in the county is a necessary preliminary.

Yours faithfully,

(Sgd.) H. L. DOUCH.

The County Planning Officer,
County Hall,
Truro.

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HER MAJESTY'S STATIONERY OFFICE

MINUTES OF EVIDENCE

8

Wednesday, 30th May, 1956

WITNESS

National Trust



LONDON

HER MAJESTY'S STATIONERY OFFICE

1956

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List of Witnesses

WEDNESDAY, 30th MAY, 1956

MR. CAREW WALLACE, B.A., A.R.I.C.S.

*(Area Agent for London and the
Northern Home Counties)*

MR. A. A. MARTINEAU

*(Legal Adviser on behalf of
The National Trust)*

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 30th May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by The National Trust for Places of Historic Interest or Natural Beauty

*Scope of
Memorandum*

1. The suggestions made by the National Trust in this memorandum attempt to deal with the problem of the maintenance of commons owned or likely to be owned by the National Trust. The National Trust considers that every effort must be made to preserve the varied and characteristic features and animal and plant life of commons consistent with maximum public enjoyment. Many people derive as much joy from looking at bracken, bramble and thorn, as others do from seeing fine crops. Unfortunately the protagonists of one side are often quite blind to the point of view of the other. A primary duty of the National Trust is to preserve the natural beauty of the commons owned by it.

Statistics

2. The National Trust owns a total of 233,000 acres in England and Wales. Approximately 41,666 acres are commons. Grazing rights are only partially exercised over about 15,000 acres. In addition the Trust holds rights of common over some 56,000 acres; these are mainly 'fell rights' exercised by the National Trust's tenants in the Lake District over neighbouring land. The Lake District is unlike other areas in that grazing rights have not fallen into abeyance but schemes dealing with regulation, improvement and access are nevertheless needed.

*Duties and Powers
of the National
Trust*

*Section 4 (1) of the
National Trust Act,
1907*

*Section 3 (c) of the
National Trust Act,
1937*

*Section 29 of the
National Trust Act,
1907*

3. The National Trust, which was founded in 1895, was established in its present form in 1907, as a charity for the purpose of promoting the permanent preservation for the benefit of the Nation of lands and of buildings of beauty or historic interest, and as regards lands, for the preservation as far as practicable of their natural aspect, features, and animal and plant life. The general purposes laid down under the Act of 1907 were extended in 1937 to include, *inter alia*, the promotion of public access.

The National Trust has the following duties and powers over its commons or commonable land:—

'A. Except as in this Act otherwise provided they shall at all times keep such property unenclosed and unhuilt on as open spaces for the recreation and enjoyment of the public:

A 2

B. They may plant drain level and otherwise improve and alter any part or parts of such property so far as they may deem necessary or desirable and they may make temporary enclosures for the purposes of this sub-section and for the purpose of protecting or renovating turf and for protecting trees and plantations:

C. They may make and maintain roads footpaths and ways over such property and may make and maintain ornamental ponds and waters on such property:

D. They may on such property erect sheds for tools and materials and may maintain and repair such sheds:

E. They shall by all lawful means prevent resist and abate all enclosures and encroachments upon and all attempts to enclose or encroach upon such property or any part thereof or to appropriate or use the same or the soil timber or roads thereof or any part thereof for any purpose inconsistent with this Act:

F. They may set apart from time to time parts of such property upon which persons may play games or hold meetings or gatherings for athletic sports.

*Section 36 of the
National Trust Act,
1907*

'Any common or commonable land the soil of which is vested in the National Trust shall be deemed to be a common to which the provisions of Section 20 of the Commons Act of 1876 apply.'

*Section 37 of the
National Trust Act,
1907*

'All rights of common commonable or other like rights or rights of way in over or affecting the Trust property shall remain and be unaffected by the provisions of this Act and save as in this Act expressly provided nothing contained in or done under or in pursuance of this Act shall take away abridge or prejudicially affect any estate vested in or any right belonging to and previously to the passing of this Act exercisable by any person.'

Byelaws (1955)

4. The National Trust's Byelaws which came into force on 1st December, 1955, apply. Byelaw 11 refers to parking spaces but authority for the National Trust to set aside areas for car parking should be included in any legislation that may be contemplated.

Types of common

5. The commons owned by the Trust vary widely in character from the small well-grazed goose green to large tracts of blackthorn, bracken, gorse, bramble, and variations with hirsch, scrub oak and beech. Extensive moorlands and heaths also occur. Much of the land is poor soil.

*Needs for
maintenance*

6. The belief is still widely held that if a common is left untouched by man it will retain its characteristic so-called 'natural' aspect. In the minds of many people this is a beautiful open grassy space. The comparison of the states of a common such as Hudnall in Hertfordshire over a period as short as ten years clearly confirms the fact, well known to botanists, that vegetational succession is steadily taking place, through intermediate stages of thicket and scrub, towards high forest. Other examples are Bookham Common and Holmwood Common in Surrey, Hudnall Common in Hertfordshire and Maidenhead Thicket in Berkshire. This rapid growth of scrub is most marked where no grazing rights are exercised, or where there is little public access. As grassy glades and paths become impenetrable thickets, public access diminishes. The disappearance of rabbits has already begun to accelerate this process.

The need for still more active management to control the growth of undesirable scrub has therefore become increasingly important. It is part of the National Trust's normal work to carry out the maintenance of open spaces, including commons.

Sources of income

7. The National Trust is dependent on endowments, rents, legacies, donations and membership subscriptions for the maintenance of the whole of its properties. In many cases the only income from a common is a few shillings a year in payment of wayleaves and an occasional sale of timber. This is quite inadequate to carry out litter collection, much less to pay for trimming or clearing rides, or planting trees. Costs are likely to be high for the proper ecological care of such lands. In a very few cases, local authorities contribute towards the maintenance of the National Trust commons; for example Cookham and Maidenhead in Berkshire and Danbury and Lingwood in Essex. In view of the benefits and enjoyment a neighbourhood derives from its commons, local authorities should contribute to their upkeep. Royalties for gravel, sand or brick earth are rare from the Trust's properties.

Section 7 of the National Trust Act, 1937, refers

8. The following solutions to the problems of maintenance have been put forward.

Regulated grazing

A. The commoners should be asked to agree to part or whole of the common being fenced, water being laid on and the area re-seeded down to grass and grazed by the commoners.

The objections to this are usually:—

- (i) The commoners may not agree to spend money: the owner cannot be expected to do so unless he is allowed to let the grazing.
- (ii) There may be no persons exercising rights of common, particularly of grazing.
- (iii) The commoners cannot be found. The revival of common rights, for long discontinued, may not be the wish of the people of this country.
- (iv) If the commoners can be found, they would not wish their cattle, if they had any, to graze with other cattle on either fenced or unfenced land. This may become less important when the whole district concerned has become a T.T. area.
- (v) A hayward would be needed: they are hard to find.
- (vi) The expense of fencing (as the number of gates and stiles would have to be numerous to allow public access), watering and seeding is considerable. Electric fencing might be used on the less frequented commons but its use presumably requires special legal sanction.
- (vii) No income is made available for the maintenance of the rest of the common, and hence for the benefit of the neighbourhood.

Letting of grazing

B. Alternatively the grazing might be let annually to a farmer. Reclamation, cultivation and seeding down to grass will usually be necessary first. This presupposes that there is an area of fenced grazing to let and that rights of grazing are no longer to be exercised by the commoners.

Arable farming

C. It has been suggested that parts of the commons should be set aside without fences and let as arable land. This has been done, for example, under requisition and licence through the Hertfordshire Agricultural Executive Committee at Ashridge

(Northchurch Common), and at Maidenhead. Areas of impenetrable and untended thickets can be seen at Maidenhead alongside land huddled into featureless arable land. Neither of these extremes is desirable.

Shifting cultivation

D. A scheme of shifting cultivation might be possible on some of the larger commons but it must be remembered that the soil is often so poor that much of a common may not be capable of cultivation.

Combinations of these solutions are probably practicable on parts of the Trust's commons but legislation is needed.

Procedure

9. Unless local opinion, including that of the commoners, is fully consulted about any proposed scheme, there will be great opposition to any change. It has been suggested that a permanent Commons Commission responsible for approving schemes of management, which have been considered at a public enquiry might meet the case. The Trust would prefer that the Ministry of Agriculture should be advised on every scheme by a Council composed of not less than 50 per cent. from the amenity organisations together with representatives of nature conservation and agricultural societies.

Forestry

10. The National Trust does not feel that the formation of extensive forestry plantations are either appropriate or practicable on commons owing to the interruption of public enjoyment and to the high costs involved. The Trust already plants and fences small roundels of trees on some of its lands. More of this could be done if money was available. Where natural woodlands already exist, our policy is to perpetuate them, unless, as in the case of some areas in Surrey, natural regeneration is blotting out the view and occupying too high a proportion of the open space.

Conclusion

11. The National Trust hopes that neither the view that commons should be kept untouched, nor that they should be converted into agricultural holdings, will prevail. The Trust feels that a judicious mixture of the two will often be the solution. Each case should be decided on its merits, bearing in mind the size and character of the common in question, and the donor's wishes. Great benefit can be derived from the sense of freedom the public can enjoy if they are able to see, walk or ride over unfenced common land. The Trust's primary duty is still to preserve the beauty of the commons owned by it.

Recommendations

12. The National Trust recommends that:—

- (i) Powers should be given to let parts of commons for cultivation or grazing, with or without fences, subject to safeguards as to public access and nature conservation, and conditional on the net income being spent on the maintenance of the rest of the common lands.
- (ii) The National Trust's powers laid down in Section 29 of the Act of 1907 should be re-enacted, in so far as they may have been restricted by the Law of Property Act, 1925, and extended to cover the above recommendation and in addition the setting aside of areas for car parking.

Examination of Witnesses

MR. CAREW WALLACE, B.A., A.R.I.C.S., and MR. A. A. MARTINEAU,
on behalf of the National Trust,

Called and Examined

1316. *Chairman*: We are very grateful to the National Trust for giving us this memorandum and also, while putting in everything, for making it short. May we take paragraph 3 of the memorandum which refers first to Section 4 of the National Trust Act, 1907? You say

'The National Trust, which was founded in 1895, was established in its present form in 1907, as a charity for the purpose of promoting the permanent preservation for the benefit of the Nation of lands and of buildings of beauty or historic interest, and as regards lands, for the preservation as far as practicable of their natural aspect, features, and animal and plant life'.

I wondered if you could tell us how you interpret 'natural aspect'?—*Mr. Wallace*: I think that is the hardest question one is ever likely to be asked by any tribunal.—*Mr. Martineau*: It is fair to say one thing: whenever I have been asked about the meaning of the word 'natural' in sub-section 4 (1) of the 1907 Act, I have taken the view that it cannot possibly mean leaving anything we acquire just as it is and doing nothing to it. Obviously that would result in land becoming completely derelict, and probably forest. I certainly interpret the word 'natural' here as not having that connotation, that strictly literal sense. It seems to me it would make complete nonsense.

1317. *Professor Stamp*: Would you say there is a very strong public opinion in favour of maintaining the status quo? Where you have an open common with heather and so on that is the public's idea of a common, do you try and keep it like that? Or where you have a natural piece of fenland is the desire to keep it as it is, and, again, where you have common of the Epping Forest type covered with trees is the public's idea to keep that as it is? Is 'natural' being interpreted to a large extent as the present state of the vegetation?—*Mr. Wallace*: Yes, if 'present state' means the state it was in when it was given

to the National Trust. It may have altered considerably since then, but, in general terms, I agree.—*Mr. Martineau*: I think it would be fair to say we should not feel that what the public thought was the natural condition of any particular property was necessarily the right one, and we might think some particular property was best preserved within the meaning of Section 4 in a way which might not be the most popularly accepted way. An obvious example, if I may go off commons for a moment, is a place like Wicken Fen. It might be that people wished to have complete liberty to run all over it. It is quite obvious however that Wicken Fen must be kept as a nature reserve especially in view of the words 'preservation of animal and plant life'; so I think the Trust must exercise its discretion, even if it is not entirely at one with the popular view.

1318. *Chairman*: Is Wicken Fen a bird sanctuary?—It is a nature sanctuary in the widest sense of the word.

1319. Perhaps you would tell us generally what your policy is in relation to local opinion in these matters?—*Mr. Wallace*: The policy of the Trust has always been, and still is, to consult local opinion. That is one of the reasons why we have a series of local committees to which are elected members of local preservation societies, local authorities, county councils and so forth, and of course those persons who were actively concerned in subscribing to that particular property and obtaining it for the National Trust, or who in fact gave it to the National Trust.

1320. *Sir George Pepler*: I seem to recollect that in the Seven Sisters area there was a little difference of opinion between local people and the Trust's headquarters?—There was considerable difference of opinion with regard to the preservation of the downland. The Trust's point, I think, was that if left unfenced and grazed to a very small extent it would eventually become impenetrable. It therefore took a firm attitude—which local opinion now I gather

is very much in favour of—that the land was to be fenced, subject to plenty of means of public access, and grazed, which does something towards keeping the downland as it was given to the Trust originally to preserve. It illustrates these difficult words ‘natural aspect’.

1321. *Mrs. Paton*: Do you find local opinion challenging your point of view, or more often co-operating with you?—I should have thought it was overwhelmingly in favour of the Trust. One only remembers of course the particular differences of points of view like the Seven Sisters, or Hatfield Forest.—*Mr. Martineau*: I should have said, we do not have many complaints and by no means all the complaints are entirely representative of local views.

1322. *Professor Stamp*: One can say that any lowland area in this country, whatever its present state, will if left to itself become covered first with scrub, brambles and so on; in due course that will pass to a type of woodland, probably oak woodland which is the natural climax vegetation of the country. Is the National Trust's policy to arrest that change at some particular level, and is the level at which you decide to do so not necessarily the level which the land was at when it was handed over, nor necessarily that favoured by local public opinion?—*Mr. Wallace*: Not necessarily, but I think usually our policy will be to maintain it in the state it was in when the Trust took over—in general character but not in detail; in parts, therefore the answer is yes, and in parts, no.

1323. *Mr. Arnold-Baker*: Does it really amount to this, that the word ‘natural’ has no positive definition here? Is it rather negative, implying something that men do not do?—*Mr. Martineau*: We interpret it, rightly or wrongly, as leaving it to the discretion of our committee as to what is best.

1324. *Chairman*: Is it partly a financial problem? I suppose if you are going to try to keep an area park land you want to have it completely grazed?—*Mr. Wallace*: Yes, it is a big point throughout common land and other lands.

1325. In paragraph 2 of your memorandum you mention the area of commons which you have. Will you tell us where they are?—We will hand in a

list of our properties in which those areas which are commons have been marked together with those over which we think common rights have been exercised in the past.

1326. *Professor Stamp*: The figures in paragraph 2 are not quite clear to me. ‘The National Trust owns approximately 41,666 acres of common. Grazing rights are only partially exercised over about 15,000 acres.’ Does that mean, over the remainder grazing rights are fully exercised?—It is ambiguous. It means they are not exercised at all over the remainder, as far as we know. We have 26,000 or 27,000 acres of common land over which there is really no exercise of grazing rights at all, and only partially on the remainder.

1327. *Chairman*: Would you think that was typical of commons throughout the country?—I am afraid I really do not know the extent of the whole problem statistically.

1328. Would it be likely that the commons which are handed over to you are those which are not grazed?—I should have thought so, but I have no figures.

1329. *Professor Stamp*: Your suggestion, I think, in the latter part of paragraph 2 is that, broadly, grazing rights have fallen into disuse over most of the commons with which you are concerned?—Yes. There are some notable exceptions but they are a very small fraction of the whole.

1330. *Chairman*: Are any of your commons urban commons and if so, in their case, do you find the law satisfactory?—East Sheen Common, for example, is in the metropolitan area, and that of course is very much visited by the public. Barnes Council carries out the work for us there and takes full responsibility. We merely have an overseeing capacity and make regular visits. There is a private Act relating to it. Bookham Common, as another example, is under a local management committee of the National Trust and is getting tremendously overgrown. I have noticed that even visiting it at something like intervals of two or three years.

1331. *Sir George Pepler*: Is it very much visited?—Yes, but it would presumably be visited even more if one had wider spaces to walk over.

1332. Is it grazed at all?—One of the outlying commons in the complex of Bookham Commons is, but it is subject to a recent scheme for fencing and grazing part of it. I think that other than ponies being grazed on the wayside verge of Bookham Commons the main part is not; it certainly does not give that appearance.

1333. *Chairman*: Was that regulation scheme under the 1899 Act?—It was an application under the Law of Property Act, 1925, to the Minister of Agriculture, Fisheries and Food. We suggested we had power to fence temporarily under the 1907 National Trust Act and they suggested—admittedly diffidently but not for the first time—that we had not got that power. They suggested it was better to apply for consent to enclose part and graze it.

1334. You mention it in your paragraph 12 and also in paragraph 3 where you set out the provisions of Section 29, National Trust Act, 1907. How far is this provision consistent with Section 194 of the Law of Property Act?—We thought, rather than suggested to the Ministry,—it was not stronger than that—that we had got powers temporarily to enclose. But it was better, we felt, that the maintenance of this land should not be left in doubt. It had previously been cultivated under requisition and we felt it ought to be kept as an open space. We therefore applied for, and the Minister granted, consent for part enclosure of the part of Bookham Common known as Banks Common.

1335. Section 29 uses the word 'unenclosed', but it seems to me it does not mean 'enclosure' in the technical sense at all. It says in paragraph A: '... shall at all times keep such property unenclosed'. Paragraph B says: '... and they may make temporary enclosures'. You cannot have temporary enclosure in the legal sense, can you?—*Mr. Martineau*: I take it to mean, putting up temporary fencing.

1336. So that in fact this paragraph B is inconsistent with Section 194 of the Law of Property Act?—Yes. One might say so.

1337. Does it not mean, under Section 194, you would have to get the Minister's sanction?—I do not want to be dogmatic on this point but I would

suggest that while Section 194 might properly be construed as imposing an absolute obligation not to fence, it should be read as subject to any cases covered by private or special Acts, and to the provisions of those Acts.

1338. Even where those Acts are earlier Acts?—Perhaps I might refer to what seems to me to be the relevant passage from Halsbury's Laws of England. It is the Hailsham edition—the second edition—Volume 31, page 549, paragraph 732. It is not specifically on commons, the heading is 'Statutes'. I emphasise that I am extremely diffident about expressing any opinion at all.

1339. *Professor Alun Roberts*: Are you able to say if the decline in grazing is greater for cattle than sheep?—*Mr. Wallace*: My experience is much more in the midlands and south than in the north so I have not much detailed experience of this. In the south I should have said, probably cattle grazing has declined less, although there are some notable exceptions as at Ashridge which we are going to visit this afternoon, where there are sheep. I would not generalise.

1340. *Chairman*: On paragraph 4 of your memorandum, I wondered if you could tell us what is the difficulty about providing car parks?—In some cases, not invariably, we wish to fence the area for the purpose of making a charge and preventing cars straying from the car park area on to land which is grazed or used only for picnickers or other enjoyment of the general public. It prevents a common being littered with cars all over its surface as happens if it is an open grassy common.

1341. *Professor Stamp*: Am I right in thinking the establishment of a car park requires planning consent?—*Mr. Martineau*: I suppose it would depend on what exactly was involved in the establishment of a car park. I presume that if you lay down a special surface for the purpose it probably would, but if you had a piece of land and allowed cars to come on to it, which in a sense can be said to be establishing a car park, it would not necessarily.

1342. *Chairman*: I suppose it might be argued that it was a change in the use of the land which was not agricultural.—It seems to me to depend on the extent to which you establish a real change in the use of the land.

1343. Apart from that, would there be any difficulty in establishing car parks on most of your commons? I imagine they must be under-grazed rather than over-grazed, and the commoners could not say they were being deprived of their common rights.—*Mr. Wallace*: There would be no difficulty, provided the commoners were not deprived of their rights.

1344. *Professor Stamp*: I wonder whether the National Trust has a knowledge of the point of view which I think has gained currency in recent years, that it is of great benefit to common and grazing lands generally to run cars over them in that it acts as a roller and helps to improve the turf?—I think that is offset by the increase in litter and other damage, particularly on wet days. For car parking there is no disadvantage, but the actual driving across land not set aside for it does cause a great deal of damage in wet weather and therefore a great deal of unpleasantness to people on foot.

1345. *Mr. Arnold-Baker*: And becomes worse still, I suppose, if lorry drivers follow suit?—That is what usually happens.

1346. *Chairman*: Have you applied Section 193 of the Law of Property Act to your rural commons?—I cannot think of a case.—*Mr. Martineau*: I would not be sure that we have not in one or two.

1347. There is a provision in that Section, if I remember rightly, against driving cars on to a common. Can you tell us why you have not applied it, because would that not give you powers of regulation?—Yes, within the terms of paragraph B of Section 29, subsection 1, of the 1907 Act, it would. That is a matter of policy of which I am afraid I know nothing.—*Mr. Wallace*: I do not think that has been considered, but our byelaw 11 probably serves the same purpose.

1348. *Professor Stamp*: Regarding paragraph 6, is the National Trust in favour of the reappearance of rabbits? They are referred to as accelerating the process of deterioration.—I do not think the National Trust is in favour of the reappearance of rabbits, in view of its tremendous responsibilities both for pure forestry and for amenity in woodlands and commons.

1349. *Sir George Pepler*: Paragraph 6 seems to me slightly inconsistent with paragraph 1 where you refer to many people deriving as much joy from looking at bracken, brambles and so on as others do from seeing fine crops; in paragraph 6 you refer to the impenetrable thickets and diminishing public access.—The suggestion is that visual access—looking at it—might be as attractive as walking through it. I do not think in fact we feel that just merely being able to look at a common is as enjoyable to the public as entering it. I think that is a matter of experience. People above all enjoy walking, riding, and so forth through commons rather than just being able to look at the edge of an impenetrable blackthorn thicket, except perhaps children who probably enjoy penetrating the thicket as long as it is not absolutely impenetrable!

1350. *Professor Stamp*: You include riding in public access. Is it the policy of the Trust to permit horse riding?—We set aside tracks specifically for the purpose. At Maidenhead, for instance, a perimeter track has been cut round the thicket.

1351. Of course the damage by horses to footpaths is even greater, I suppose, than by vehicles?—The National Trust byelaws specifically refer to setting aside tracks and give powers to ensure that those tracks are kept to by riders because of the point you raise.

1352. *Mr. Floyd*: If as a result of lack of grazing most of the National Trust commons went to thicket like Maidenhead, would it be beyond the powers of the Trust to clear them unless there were some monetary return?—Yes, I think it would be, unless the Trust's financial position was greatly altered in succeeding years.

1353. *Chairman*: In paragraph 7 you refer to 'proper ecological care'; what exactly does that mean?—It means looking after particular types of vegetation on various kinds of common to which, for instance, the Nature Conservancy has drawn our attention as being of special scientific interest. We have liaison with them, and we have our own nature conservation committee.

1354. *Professor Stamp*: In the middle of paragraph 7 you refer also to income as being quite inadequate to carry out

litter collection, etc., or for planting trees. Have you any legal right to plant trees on common land?—We think we have, under the 1907 Act, Section 29 (B): "They may plant . . . and otherwise improve . . . any part or parts . . . and they may make temporary enclosures for the purposes of this subsection. . . ."

1355. In other words you are granted powers under your National Trust Act to deal with commons in a way denied to the lord of the manor. Is that your interpretation?—Yes.

1356. *Mrs. Paton*: On paragraph 7, regarding contributions by local authorities, is it your practice to ask them for contributions or do they offer them as a matter of goodwill?—I think both have happened. We have often asked, and some of the more enlightened local authorities have offered.

1357. *Mr. Arnold-Baker*: What types of local authorities have power to make such contributions?—*Mr. Martineau*: They are described under Section 7 of the Act of 1937, any county borough, urban or rural district or parish council.

1358. *Sir George Pepler*: Would you wish that this Commission might recommend and encourage authorities to make contributions?—*Mr. Wallace*: We should be delighted, I am sure.—*Mr. Martineau*: We often find local authorities, sometimes very important ones, who are sometimes quite unaware of this power.

1359. *Professor Alun Roberts*: In view of the widespread nature of your stewardship over the whole country, and in view of the extremely large numbers of the population making use of your properties today, do you think it might be unjust to charge upkeep on the neighbourhood? Should it not be a national charge? I realise this is a matter for the legislature, but I would like the view of the Trust. Do you think the mobility of your clientele and their use of modern transport are such that it would be unfair to ask a local authority to contribute, and the cost should be spread wider?—May I take it as a general question dealing with Trust lands? If so, an instance would be the Clumber Estate in Nottinghamshire. When we bought that we could only do so as it would cost a great deal to keep up on the basis of making sure that we should have the

necessary finance. We invited a considerable number of local authorities to agree to finance it and they clearly all went into it on the basis of the extent to which the population for which they were responsible were likely to use Clumber. I think it is fair to say that the proportions in which they did contribute were not so much based on their respective financial ability as on the extent to which they expected their population to use it; I think they clearly took the view that the centres of population fairly near were much more likely to use it than people from far away.

1360. If one could take a simple instance of a small common on a main arterial road, in the old days what was contemplated was the amenity of the parishioners of that small parish: now it may be used a hundred times more than previously and the people who are enjoying it are pretty well drawn nationwide. Would you regard it as fair to approach the parish council in that case?—I should wonder to what extent users of the arterial road would stop at the small common. I should have thought they would tend to go on.

1361. *Chairman*: In paragraph 8 you give us a very excellent summary of the alternatives which might be adopted. In the case of A (i), you mention that the owner cannot be expected to provide the money unless he is allowed to let the grazing. In most cases could you not let grazing as lord of the manor if the land is all under grazing at the moment, and you are lord of the manor?—*Mr. Wallace*: Yes, but I think the trouble is that it would have to be fenced.

1362. But there are lords of manors who let stints on commons?—Yes, gated commons. Most, but not all, of ours are unstinted commons.

1363. Even then, could you not allow others to come in as they are doing, for example, in the New Forest?—I think the difficulty of that is that you cannot let the grazing exclusively to one person, if there is any possibility of a revival of the exercise of common rights which have been in abeyance for ten, fifteen or twenty years. One could never therefore get an economic rent relative to the cost of the fencing and maintenance.

1364. In paragraph 8A (iii), you also mention the difficulty of finding out who are the commoners and what common rights they have. Have you tried any

system of registration?—We have held public meetings with not very good results. The results have always been extraordinarily vague. We have advertised, but we have not tried any form of registration.

1365. Do you think that a national system of registration would be an advantage?—I should have thought it would be essential.

1366. *Mrs. Paton*: On alternative A, sub-paragraph (v), what is a hayward?—A supervisor of grazing cattle on behalf of the lord of the manor and the commoners.

1367. *Chairman*: On paragraph 8D, have you thought out in any detail what legislation would be needed to enable combinations of these solutions to be practicable?—No.

1368. It would in fact involve a considerable alteration of practically every act from 1876, would it not?—Yes.

1369. *Professor Stamp*: Taking that paragraph as a whole, is the reference to grazing primarily cattle grazing?—Yes.

1370. Is there difficulty about public access through dogs conflicting with grazing by cattle and particularly by sheep?—That difficulty is there all the time. We do not think that grazing of commons, particularly fenced commons, is inconsistent with public access, but it is difficult. There is one safeguard we can and do try to apply. Our byelaws specifically refer to the offence you mention, and the penalty has recently been increased to £5. We have had trouble at Runnymede and have had prosecutions there. I think we have been successful, certainly at Runnymede, for various offences under the byelaws.

1371. *Chairman*: In paragraph 9 you prefer an advisory council. I think it is intended to be an alternative to a permanent Commons Commission and would be advisory to the Ministry of Agriculture. Can you tell us why you prefer that?—The committees of the National Trust discussed this point at some length and they felt that the addition of another new body would tend, if anything, to make it probably slower to get any change in the use of commons than the existing machinery. The Trust prefers to go to the Ministry of Agriculture for a new scheme, rather than have a fresh body started. I do not know who

suggested there should be a permanent Commons Commission, but it has been suggested in several quarters, and in discussions we have had with many individuals over the last eight years.

1372. *Sir George Pepler*: I notice that you refer to an advisory council 'composed of not less than 50 per cent. from the amenity organisations'. What is the other 50 per cent?—They would be scientists, agriculturists, foresters, local and planning officials, selected by the Minister.

1373. *Chairman*: You are, of course, thinking in terms of commons which are used mainly for purposes of public access?—Yes.

1374. In paragraph 10 you refer to the high costs involved in afforestation. Can the Forestry Commission not assist in any way?—Not by planting grants at present. They are not applicable for planting on common land.

1375. But if their powers were extended to common land so that they could take it over for a limited period, as the Forestry Commission did in fact suggest to us, recover the capital cost and then hand over to a local authority or to somebody else, would that meet with the approval of the National Trust?—Not on the Trust's commons. We think the costs are likely to be greater, because we have not only to protect against animals, even without the rabbits, but particularly against people and fire, to a greater degree than anywhere else. The same amount granted would not go so far as a planting grant applied to ordinary inclosed lands.

1376. In other words, these high costs involve other things, and not just planting?—Yes, protection and specially high costs over and above the normal ones that are experienced.

1377. *Professor Alun Roberts*: You say in paragraph 10 that where natural woodlands already exist, your policy is to perpetuate them; does that mean you apply a scheme of management?—Yes, to some of our commons in the south-east.

1378. Where you can do felling and that kind of thing?—Yes, particularly on the sandy soils of the south-east counties, Surrey and Sussex.

1379. *Chairman*: You are in a different position from owners of

commons in that whereas you may replant, the owner of a common normally has no such power?—Yes.

1380. *Mr. Floyd*: Would you agree that, although there is a feeling that the planting of trees restricts public enjoyment to wander, in fact in a managed wood they can wander more easily than in thorny scrubland?—In the early stages I should think the answer is no, for perhaps as long even as twenty years; for plantations in a later stage I think the answer is yes.

1381. *Sir George Pepler*: You make the point in a previous paragraph of afforestation blocking the view.—Yes, in some cases the Trust has had, while encouraging natural vegetation, to uproot trees in the middle of a view point.

1382. *Professor Stamp*: I have tried hard to reconcile your last two paragraphs. Taking the first of your major recommendations, you say that power should be given to let parts of commons for cultivation, with or without fences. You visualise parts of commons cultivated and enclosed subject to safeguards as to public access and so on. That is all right, but then above it, in paragraph 11, you say in effect that they should not be converted into agricultural holdings. Is not cultivation with fences, subject to access, conversion to agricultural holdings?—The conversion to an agricultural holding was specifically put in in the sense that the whole of a common should not be converted into an agricultural holding. It is a difference between the whole and the part.

1383. *Sir George Pepler*: If I may refer back to land, including commons, which has been handed over to the Trust, may not the donor have made conditions as part of his gift?—Yes, sometimes expressed in the conveyance, sometimes in a separate document.

1384. I imagine they would be subject to your operating under the powers of your Act?—Yes, but we should feel a very strong moral obligation to carry out as far as was practicable the wishes expressed by a donor.

1385. *Chairman*: That presumably would not apply to a common if the lord of the manor gave his rights to you. Would he then be able to limit you in any way, even morally?—I think, not legally, probably morally.—*Mr. Martineau*: I

think he would express a hope that we should abide by certain conditions and stipulations, and we should, so far as we properly could, do so, certainly bearing in mind the rights of the commoners.

1386. *Professor Stamp*: The National Trust through its long experience now has a very excellent knowledge of what the public needs in the way of access. It also realises the necessity for agricultural use in some form or other while wanting to satisfy those needs of public access. Is the existence of common rights a hindrance to its work?—*Mr. Wallace*: I think they could be in some cases. I do not think I would go farther than that.

1387. To put it another way, suppose we eliminate the existence of common rights on common land altogether, would not the National Trust be in a better position to provide what the nation needs on those lands which it controls?—Provided they had the necessary finances to carry out the maintenance of that land.

1388. *Mr. Floyd*: If given this expedient to improve the grazing you fenced a part of the common and let that for a few years, would you want any special provisions to exclude it from the Agricultural Holdings Act?—We would want the prior consent of the Minister that a notice to quit would be valid. Surely that would be essential. Some protection as regards a lease would be an essential pre-requisite. We had in mind the existing powers of the Minister.

1389. *Mr. Arnold-Baker*: Is it your experience, leaving out of account impenetrable thickets, that in general the majority of members of the public who go to a common do not go much farther than fifty yards from the road?—There is a large mass of people who do perimeter picnicking, or whatever one might call it; there is another large, but not so large, mass of people who use the rides, glades and so forth, and go right through and across a common.

1390. *Professor Stamp*: Following up that point, would you subscribe to a view expressed to us that the latter class is getting smaller as more and more people own cars and have become perimeter picnickers, and there is less use of footpaths than formerly?—I think there is a less use of footpaths because they are becoming more and more impenetrable.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

9

Thursday, 31st May, 1956

WITNESS

Ramblers' Association



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MR. W. S. TYSOE
(*Chairman*)

MR. TOM STEPHENSON
(*Secretary*)

on behalf of the Ramblers' Association

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 31st May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
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DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Ramblers' Association

THE CASE IN GENERAL AGAINST INCLOSURE (paras. 1-10)

1. The evidence of the Ramblers' Association is directed to opposing any further inclosures, and to supporting for each common a policy of 'regulation'. This regulation would be through Committees of Management and would leave unimpaired the access enjoyed at present whether by right or by custom. (As regards access enjoyed at present by custom only, or *de facto*, we call special attention to para. 50 below.)

2. We realise that if our still surviving commons had had any second rate, not to mention first rate, agricultural value, they would long ago have been inclosed. At the same time we are, as ordinary citizens, definitely anxious that common land should be 'improved' as grazings—whether as 'rough' land or as improved grass. If commons are thus preserved and protected they will continue to serve their other purpose of providing the great reservoir of 'open country' available for outdoor recreation. As representatives of the open-air movement, we realise and value the blessings which our system of commons has created for the country; and we are aware equally that if commons become a waste of scrub or bog and fall into disuse for grazing, then their value as a place of outdoor enjoyment, public access and natural beauty will vanish together with their use for grazing. The cause of the commoners and the cause of ramblers are opposite sides of the same coin.

3. Clearly, however, very many of the metropolitan and suburban and urban commons, which we refer to below as commons of class 'U' (Urban), can and will have little use as grazing; on the other hand the large rural commons, which we refer to below as class 'R' (Rural), have and can have a really important value for grazing, if properly controlled, while their value for recreation is of quite outstanding value; and we call attention to the fact that it is the commons in the hill lands—in the Lake District, the northern Pennines, Wales and Dartmoor—which have been much less than adequately discussed and considered by those who have written and argued about the problem of commons in general. Discussion has given

too much emphasis to what, by a queer limitation of the word 'home', are now called the home counties, and too little to the hill lands.

4. The total amount of common land in England and Wales is somewhere about $1\frac{1}{2}$ to 2 million acres; of this area $\frac{1}{4}$ million acres are in Wales (Hansard, vol. 527, col. 1656) and some sixth of a million in the Lake District. The total of Crown Commons, in Wales and the Lake District and Devon, is quite considerable (perhaps $\frac{1}{4}$ million acres), and of this it was said in evidence before the Select Committee on Commons (Report 1913, H.M.S.O.) that the Crown would welcome regulation (i.e. agricultural regulation, as to stock turned out, heafs, etc.). It may be noted that this full-dress Report of the Select Committee in 1913 is the last serious consideration which Parliament has given to commons; and that the recommendations made by this Select Committee led to no result. Action is greatly needed.

5. The figures of inclosure given in the Appendices of this 1913 Report are very striking, showing the severe drop in the number of inclosures after the Commons Act, 1876, which for the first time discouraged inclosure and encouraged regulation. The important figures are these:—

(a) Total, up to 1912, of Inclosure Awards made under all the various Acts dated 1845–1899	...	...	...	...	973
(b) Area thus inclosed	...	...	...	...	650,000 acres
(c) Total of Awards (included in (a) above) made after the passing of the 1876 Act and up to 1912	...	...	...	...	35
(d) Total of Awards (included in (a) above) made during the 13 years 1892–1904; after which there were no more up to the end of the Select Committee's period (1912)	...	...	...	...	7
(e) Between 1904 and 1955, i.e. during 50 years, we have traced only two inclosures, of modest area—in Gloucestershire and Westmorland	...	...	...	...	2

Thus the number of Inclosure Awards came down to vanishing point. So with some shock we now find the Ministry proposing (1956) an Inclosure Bill for 23,000 acres (Hexhamshire and Allendale) in Northumberland. See below Appendix I, Allendale.

6. Notes

- (i) The full total of *Regulation and Management Schemes* under the 1899 Act is not known to us; but up to 1912 it was 93, covering 2,600 acres.
- (ii) It is significant that of the 20,000 acres of common land requisitioned by the Ministry under D.R. 51 during the war for cropping, the Ministry finally purchased, under s. 85 of the Agriculture Act, 1947, only some 5,000 or 6,000 acres to preserve permanence of cropping. This shows what an insignificant fraction of common land is economic for arable cultivation.
- (iii) To the actual 'inclosures' since the 1876 Act, which are enumerated above, must be added the limitation or extinguishing of rights of common made under various Water Acts and by Service Departments; these procedures have, in this century, been those in the greatest part answerable for the extinguishment of common rights.

7. The Select Committee's Report (1913) includes the following sentences:

'Regulation of commons as distinguished from inclosure would be everywhere beneficial.'

'The 1876 Commons Act was intended to discourage inclosure and encourage regulation.'

'Inclosure under the Inclosure Act, 1865, and amending Acts including the Act of 1876 may be said to be practically obsolete.'

'No steps need be taken to consolidate the Inclosure Acts, inclosure being practically obsolete.'

This is straight doctrine.

8. In a brief discussion in Parliament in 1954 (May 14th, Hansard, cols. 1651-2) a very knowledgeable Member put forward the following criteria and requirements for any proper method of handling common lands today (he was dealing with typical 'rural' commons):—

No common to become private property.

Common land, except for temporary leys, not to be converted to permanent arable.—Fences to be temporary with gates provided for access (better, one may comment, step-stiles over the wire, with a hand post).—Commoners' syndicates to be formed, with power to let off stints when not used.—Some areas should be 'regulated' in the interest of the Nature Conservancy (with stock excluded).—No large scale planting, which leads to loss of landscape beauty and to injury of commoners' rights.

With each and all of these suggested principles of operation we very warmly concur. We comment further below, in paras. 38 to 47; but with reference to the Nature Conservancy we do here emphasise the need which there is today to keep some surviving informality and untidiness. This need is made clear by the inroads of intensive farming, the grubbing up of hedgerows, the close cutting of road-side banks, the use of selective weed killers; these are destroying much of our flora and depriving fauna of their habitat.

9. The tendency to grasp at common land as a first resort for compulsory acquisition is neither far-sighted nor justified.

It has been pointed out that within sixty miles of London there is more land that is not cultivated but might be cultivated than within the same distance of any other European capital. And of this uncultivated land much the larger part is *not* commonable. And the same sight of wasted land, not commonable, may be observed on a railway journey from London to the north. A well known Welsh agriculturalist remarked that "if all the marginal land in this country were adequately developed" there would be no meat shortage. Indeed any proposal to pick on common land in particular to inclose for housing, large public work and other *non-agricultural* purposes may justly be countered by the claim that in this small country our reserves of land available for open-air recreation should, in the larger public interest, not be eaten into and diminished. What may be the easiest, the cheapest, and therefore the apparently most desirable land to take by compulsion, is not that which is best taken. Natural beauty, we hold, equally with other beauty, has an absolute value of its own, but the enjoyment of it, which is an open-air enjoyment, needs the most vigorous defence today against the incursions of science and the short-sighted judgments of materialism.

On this whole matter of present and recent threats to commons, we would refer to a passage in the Report on 'Footpaths and Access to the Countryside' (Cmd. 7207), issued in 1947 as a part of the wider review then conducted by the Hobbhouse Committee:

'Over 80 per cent. of the 40 million people of this country live in towns and cities. Indeed, nine-tenths of the population occupy with their dwellings less than one-tenth of the land surface. To them the countryside should be a national playground for air and exercise. But these town dwellers only make regular contact with the world of nature and clean fresh air with difficulty and expense. To reach open country at all is not easy for most of them. Moreover . . . the demands of the Services for manoeuvre and training space, the anxiety to protect water supplies, and the reseedling or cultivation of many thousands of acres of downland and rough pasture have cut severely into the wild open country that was free to the Rambler in former years. As the urban dweller fought in the past for his urban commons and open spaces so he and the countryman need today to agree together how best to achieve fuller public use of the countryside through access to uncultivated land.'

10. That common land in this or that place is agriculturally under-used, or mis-used, is not at all a convincing argument for inclosing the land. What is needed is to deal with the causes of the poor usage. During the last two generations, among the many difficulties which have descended upon common lands, two have

predominated. One is the immense growth of motor traffic, and its increasingly wide penetration along by-roads; the other is the death of the manorial system. The Law of Property Act, 1922, signed the death certificate of manorial jurisdictions and of the lord's interest, already weakened before. We make suggestions on these two points below (on roads, see paras. 45-47). The essential matter, as we see it, is constructive action to counter the difficulties; the frequent tone of mere ineffective lamentation threatens to make an end of commons, commoners' rights and public access equally. Discussions by commoners or the N.F.U. about commoners' committees and the like have been shy of formulating actual details of procedure and constitution.

'REGULATION' OF COMMONS

11. In the relevant Acts the usage of the word 'regulation' seems to have an emphasis in two different ways, which it is important to distinguish.

No classification of types of common quite suits the facts. But there is a broad distinction between urban, suburban and metropolitan commons on the one hand, and the rural commons (particularly the great hill pastures of commonable land).

12. In what follows we have called the former type of common class 'U' (it is urban, very roughly), and the latter we have called 'R' (rural) though not by that implying that 'R' commons are not increasingly accessible.

We discuss first 'regulation' in reference to class 'U'.

URBAN ETC. COMMONS (Class 'U') (paras. 13-20)

13. For the 'metropolitan' and suburban commons and generally speaking for commons of a limited area quickly accessible from any considerable centre of population, the real emphasis of the word regulation is on providing public access and on preventing both nuisance and hindrance to public enjoyment. 'Regulation' to this end can prevent, e.g., the lighting of fires, the unauthorised burning of scrub, the spread of seedling firs (this particularly on the Surrey commons), the deposit of refuse, unauthorised permission for golf courses and other injuries to access and enjoyment. At the same time there is the subordinate aim (in this class of regulation definitely subordinate) of protecting or improving the rights of common, which rights however in this class of cases are used or little used or not used in most varying degrees. The main aim is thus social, and the agricultural aim—for the protection of grazing, etc.—is here mainly, though not in all cases entirely, subordinate.

14. The great advantage of 'regulation' in this class of cases is that offenders against the byelaws made under the scheme can be brought before the magistrates by a responsible body, namely the committee of management or conservators. For if this type of common be left unregulated, there is no one who can or will take the required legal action. Commoners in law cannot, and the owner of the soil will not; for, since the abolition of manorial incidents by the Law of Property Act, 1922, the owner has had no financial interest left in his commons except in regard to mineral rights, and he is most unlikely to come forward simply as a protector of public interests. It must be noted, however, that if the conservators are a purely unofficial body, then they cannot raise a rate for their expenses—as can a local authority when it is itself the managing body—but must rely on funds voluntarily contributed either by private gifts or by some neighbouring local authority (e.g. the L.C.C.) as beneficiary and benefactor.

15. Further advantages of the regulation of this class of commons are (1) neither owner nor commoners are deprived of any 'profitable or beneficial right'; the former remains owner (unless he prefers to convey his land, as he can, to the body of the management) and the latter remain commoners. Therefore no objection to a scheme of regulation is very likely to be put forward (though this does happen) by either party, since regulation is to the advantage of each; (2) since the rights of common are continued, the common remains a common, a vital point, and it therefore remains protected by s. 194 of the Law of Property Act, 1925; (3) the body of management has a duty to manage, as well as a right to manage (Hunter, 'Open Spaces, etc.' Appendix III, judgment of Master of Rolls, 1879, *A.G. v. Amhurst*).

16. It is of interest that schemes of regulation alike under the Commons Act, 1899, and under the Metropolitan Commons Acts are reported annually by the Ministry to Parliament in a single list (1899 Act, s. 21), which shows that these two methods of regulation are officially regarded as similar in effect and purpose, this purpose being, as said above, predominantly social. Under the Metropolitan Commons Acts parliamentary approval is required for a scheme (with a hearing before a Select Committee, as for a private bill, if there is a petition), but this approval is not required for an order made by the Ministry under the 1899 Act and there seems no reason for requiring such approval under either procedure.

17. The Metropolitan Commons Acts it may be convenient to retain, as a special provision for the special area of Greater London. As to the 1899 Act, the Select Committee on Commons of 1913 recommended it as a basis for the new legislation needed for Commons generally; but in its present form the Act seems hardly directed to the larger problem of the rural commons on the hill lands of England and Wales. There would be need to graft into any revised 1899 Act (in its applications both to 'R' and to 'U' commons) provisions for the general line of policy suggested below in paras. 21 to 35.

18. If the 1899 Act were to be retained as now, i.e. for its present purposes of dealing in effect with 'minor' commons, we urge the removal of the vetoes at present allowed to the lord and also to one-third of the commoners; for the legal interest of each of these is fully protected by the 1899 provisions; there is therefore no good reason for either lord or commoners to object to regulation.

19. For 'U' commons in particular there is a point of important detail which, in any revision of the present laws, needs attention. For it is important that those regulated commons of which the predominant use is recreational, and which are often suburban in their geographical positions, should not be given a 'suburban' aspect or treatment by minor 'furnishings' or works.

20. The local planning authorities should be given their full control over minor works (small buildings, fences, notices and so forth) on such regulated commons: a 'direction' should be included from the Ministry of Housing and Local Government, in each scheme, which would cancel, in respect of the regulated area, that freedom for 'permitted development' which is otherwise afforded by Classes XIII and II in the Schedule of permitted developments contained in the General Development Order (S.I. 1950/728) of 1950. Persons with rather bleak minds are apt to feel a little unhappy if they do not bring a pleasant piece of country into conformity with the polite and tidy standards of a public park and civilise it by providing shelters, a drinking fountain, some euonymus hedges and a few asphalt paths.

RURAL AGRICULTURAL COMMONS (Class 'R') (paras. 21-37)

21. The following paragraphs deal with the rural commons on which there is a definite agricultural usage, the most important of which are the great acreages of hill land which are commonable. (All of these have a high potential use for recreation, and this use will increase.)

22. Any legislation for the control or regulation of these commons—but always so as to exclude any legal inclosure—must contain certain flexible procedures to be applied to particular cases. We suggest the following general principles and include some comments.

23. Every common in the country should in due course be regulated, and should have a committee of management. (The veto exercisable by the owner of the soil or by a proportion of the commoners would properly be abolished, there being no interference with the 'beneficial interest' of either.)

24. There must be a definite *duty* (as well as a power) of initiative in this matter, and this must lie with the Ministry of Agriculture. For this Ministry is by law the official protector of commons; and equally it is responsible, under the Agriculture Act, 1947, and otherwise, for agricultural efficiency in general, and therefore it cannot divest itself of a due concern with commoners' rights and commoners' efficiency in farming. The initiative must lie unambiguously on the Ministry.

25. The Ministry should operate through its County Land Commissioner and its County Agricultural Executive Committee (C.A.E.C.). There should be the maximum of decentralisation and the maximum of strictly local knowledge and control and agreement. No two cases are alike. It is particularly desired that no new administrative body should be created *ad hoc*, such as a Common Lands Conservancy. This would diminish or divide responsibility of the Ministry and this it is most necessary to avoid. Moreover it would certainly be difficult to collect from outside the Ministry any group of persons who were suitably informed on this most complex matter. The Ministry has handled commons with knowledge and sympathy, and should be left in control—but, as has been said, with the maximum degree of decentralisation to the Ministry's county officers and with the maximum of local consultation (see in particular para. 29) both on the commoners' needs and on 'access'.

26. The Ministry should be under obligation, whether through its local officers or centrally, to consult with (a) the local planning authority, as responsible under the Access to the Countryside Act, 1949, for recording and for making available for public access those areas in its district which are 'open country'; (b) with the National Parks Commission, the members of which are appointed by the Minister of Housing and Local Government and which is concerned with 'preserving and enhancing natural beauty' not only in National Parks (whether or not the land is commonable) but also, through its quite general duty to co-operate in such matters with any government department, in the country at large; (c) with the Nature Conservancy, which is concerned with all aspects of 'natural' life and history.

27. There should also be consultation by the Ministry, both centrally when legislation is being drafted, and later on locally as to the types of scheme of management locally suitable, with voluntary societies concerned in open-air recreation, such as the Ramblers' Association and the Youth Hostels Association, which have a national as well as a local basis of organisation, and likewise with local bodies of the same type, where these have a vigorous and independent existence, such as the Dartmoor Preservation Association and the Friends of the Lake District. We attach great importance to this recommendation, which is in the true public interest since it will promote harmonious working in a matter of great complexity.

28.—(1) The actual committee of management, in the case of what we have called 'R' commons, would naturally consist of a majority of commoners, for to them the appreciably useful purpose of the regulation scheme will be agricultural; it is for this they will be asked to pay money. More than a moderate proportion of 'outsiders' might lead to difficulties. Representation is needed from the parish council and from the 'open-air' interests, and there should be optional attendance of the Planning Officer and of the County Land Commissioner, to whom in any case reference of disputes would be made.

Although, as has been said, no two schemes will be alike and therefore a committee is needed for each common separately, there may none the less be sufficient business involving decisions applicable within say a county or a part of it to justify or require some kind of two-tier arrangement, with a joint committee meeting at some convenient place to take joint decisions.

(2) In constituting a committee for 'U' commons, there would be commoners adequate in number to the particular case, but a majority of other persons i.e. 'residents', subscribers, and representatives of District and other Councils which are paying aid from the rates, or under the 1899 Act are acting (sometimes at present in sole control) as the managing body. (The proportions within such representations for 'U' commons would vary from case to case.)

(3) In the case of all commons of both classes the lord of the manor or his agent would have the right, if he so wished, to be a member. Large estate owners may, and often do, have a surviving *amour propre* for their commons and to secure their interest would be a gain. But the scheme should leave a discretion in this matter, unless the freak purchase of lordships by antiquaries can be stopped by some ingenious legislation. There should be a local representation from the open-air societies, nominated by themselves jointly, on the Minister's invitation, in both classes of commons.

29. The formation meeting for a committee of management would be convened by the County Land Commissioner (unless he gave public notice that for this or that common among the 'U' commons no meeting or revision of membership or duties was necessary). He or his appointed deputy would preside at this first meeting. We conceive some such procedure as follows. A new act would lay down general principles for the appointment and powers of such committees; the Minister would then issue administrative regulations. His County Land Commissioner would by public advertisement and by official invitations to persons and bodies summon the formation meeting, at which he would listen to all views and opinions. He would thus decide on the desirable number and proportions for membership and duties to be performed and on details concerning access and the like and then would publish by advertisement a provisional scheme. For no two schemes will be alike. This provisional scheme would then be open to objections from any person interested, at a public inquiry or in writing. The Commissioner would then 'make' the scheme, and the Minister would confirm, amend or reject it. The Land Commissioner or his representative would have the right to attend all meetings of established committees and there would be provision for amendment of any operative scheme, by the Minister's initiative or as the result of representations to him.

If a case arose where there was no effective exercise of common rights, it would be a part of the Land Commissioner's duties to revive such exercise.

30. All commons of which there is agricultural use should receive from the Ministry grants (to be called 'Common Land Grants') for agreed schemes of improvement. For it is fully clear that, except when a common is all but wholly recreational and maintained by the rates of one or more local authorities, there will be no effective improvement made, nor co-operation in making it, unless there is public money invested by the state. The commoners' managing committee, that is, would qualify for the equivalent of what, in a similar connection, is called a hill farming grant. The object of the latter is to improve or to rescue from neglect and deterioration land which is in danger of decay; common land (other than say metropolitan commons and some others which could be agreed) are in a similar predicament and deserve similar treatment. We would emphasise most strongly that commons cannot survive as grazing lands unless they are grant-aided (had they been agriculturally self-sufficient, they would not have escaped the old inclosures), and that, if they do not now survive as efficient grazing grounds, then they will become wastes, overgrown and swampy, which will be of no use or pleasure for our main—though not our only—purpose, namely, public access. (Indeed there are 'R' commons on the lower contours which have become of little recreational use for the reason that they have lost their agricultural use.) The agricultural and recreational uses are so much interlocked that the second definitely depends and issues from the first. We stress this point.

31. The powers of the management committee to raise a rate (annually or otherwise) from the persons and properties to be benefited (as already provided by the Commons Act, 1876, and the Commons Expenses Act, 1878) would be continued by any new act; and on this particular matter only the commoner members of the committee would vote. The aim must be to establish *by the aid of* the Ministry's new grants, a system under which it will be attractive to the commoners to invest money in land which is farmed in common but on which each man's own contribution of work and money is safeguarded from becoming, by others' neglect, a wasted effort.

Note. A precedent for such a scheme of joint payment by the C.A.E.C. (for the Ministry) and by the commoners was established by the section for 'Improvement of Commons' in the Agriculture (Miscellaneous Provisions) Act, 1942, under which the Ministry could recover from the beneficiaries a reasonable share of the cost of improvements made. (We deprecate the power under the 1876 Act to sell a part of the common to pay for expenses.)

32. Such a system of common land grants would necessarily and properly call for approval by the Ministry of proposals made for improvement and of the results achieved by the commoners benefiting by the grant. And the system of common

land grants will go far to justify to the commoners the claim which the Ministry will be making to review and to approve the grazing procedure.

33. If there are to be grants, there must also be an enforcement of standards. Here the final enforcement must lie with the Ministry, now that manorial control—the old self-government, backed by customary sanctions—is dead.

What then are to be the 'sanctions' today? And who should enforce them? Dog does not eat dog. It is clear enough that, although power to prosecute in the magistrates' court a defaulter or offender among the commoners could doubtless be conferred on the committee by legislation, this committee of commoners would in fact not itself be prepared to face the unpleasantness of prosecuting. Some other authority must have the power to ask the court to impose certain defined penalties; and this authority should be the representative of the Ministry, for the Ministry would be paying common land grants and is therefore responsible for their proper use and for the conditions on which alone the grants can properly be enjoyed. The representative of the Ministry would thus enforce the sanctions previously enforced by the manor court.

34. Since, however, a leading aim—for our own case the primary aim—is that there should be no extinguishment of rights of common, and therefore no process or partial process of legal inclosure, there must not be, as a penalty for some default, any cancellation or extinguishment of a commoner's rights. The traditional right of each commoner must continue to be 'appurtenant' to the land or tenement to which it is attached historically, so that it may be claimed undiminished by the next occupier. Subject to this, however, there seems to be no reason why a right of pasture, etc., or some agreed number of the stints, should not be let to another commoner by authority of the committee; for this would not bring into operation any process of 'merger'. (The committee of management would, in settling rights 'levant and couchant' and the proper number of stints, etc., also bear in mind the recommendation of the Select Committee of 1913 that rights of common exercised and/or claimed by those unable to do more than appeal to a tradition, without producing legal proof of their right, should be considered generously.)

35. *In summary*, the essential minimum requirements (i.e. those involving matters of principle) among the suggestions made by us above, are these:

Regulation of every common; in practice, no change might be needed for some of the 'U' commons (urban, metropolitan, etc.).

Initiative in action and final control to be a definite duty of the Ministry.

Special 'Common Land Grants' to be paid.

A committee of management to be set up for every common, with powers to 'manage' effectively because it can also enforce (i.e. by calling in aid the power of the Ministry of Agriculture, Fisheries and Food through its local officers to prosecute defaulters). Appendix II gives some particulars about voluntary and about unofficial committees of commoners.

No extinguishment at all of rights of common

36. Various branches of the N.F.U. have since the war expressed support for commoners' committees; e.g. in Herefordshire (8,000 acres of commons), in Dorset (1,600 acres), and in Gloucestershire; and there has been discussion of the matter in the local press of the Lake District. But we would repeat that we can see no success without what we have called common land grants, or without the 'sanctions' which logically follow from these and without which the required co-operation among the commoners will break up.

37. *A further note on 'R' commons.*

(a) The complexity of the problem where the areas of common are not on the scale of the true hill commons, but there is both recreational and an agricultural use of land, may be illustrated from Gloucestershire. In this county there were some 9 or 10 commons (or a total acreage of perhaps 1,200 to 1,500 acres) with each of which the county agricultural committee had dealings of varying extent during the war (it is not known whether or to what extent requisition continues, or whether there has been any compulsory purchase) but each of which has also a

recreational value. In three cases there was in existence a regulation scheme under the 1876 or 1899 Acts, and in the latter case the district council had delegated control to the parish councils. Parish council control had not produced good results; nor is a district itself likely to be a suitable body for agricultural control. In several cases the commons opened on to roads and a number of areas were therefore fenced and then cultivated by the C.A.E.C. In one case the commoners had let off their rights to one another (not to non-commoners). No two commons were—and no two commons anywhere are—alike in their problems and the general proposition that every common in the country must be dealt with individually is amply proved.

(b) *Ashdown Forest*. This provides an example of the difficulty of deciding whether an area of common is 'rural' or 'urban', in its main character and its required treatment. Here, under the Commons Act, 1876, 6,400 acres were 'regulated' and preserved as an open space in Sussex and for Londoners, in 1885. The managing body was constituted of commoners; and the point of so much interest is that it was the owners of the agricultural rights of common, rights so vigorously defended by the commoners over centuries of litigation and contentions, who at Ashdown Forest preserved as a suburban playground this great area of 'agricultural' common land.

In 1946 the War Department claimed that its proper use was to be inclosed. This demand was withdrawn, after public opposition and a public inquiry; and by the Ashdown Forest Act, 1949, the commoners' rights, and the body of conservators, and public access, were all preserved, military training being allowed on the area without ammunition or firing.

(c) *Games*. Where a common is close to a village and the contours of the common are not prohibitive, it is to be regretted that so little use has been made of the 1899 Act to provide ground for cricket or football. (Such provision would, of course, have no claim at all on common land grants.) It must not be assumed that our claim for the 'recreational' use of commons is limited to cross-country walking and hill climbing.

SOME AGRICULTURAL 'IMPROVEMENTS' REQUIRED ON RURAL COMMONS (paras. 38-48)

38. '*Adjustment of rights*', cultivation, etc. (see *Commons Act*, 1876).

In the matters listed in this section, the first two (viz. (a) and (b) below) have provision *already made* for them in the 1876 Act; it is not, however, suggested that they should now be achieved through the powers of that slow and complicated and expensive act, but that the powers required should be provided by a simpler and easily manageable procedure in a new act dealing with the whole problem of commons in general.

39. To some extent the matters listed in this present section overlap with para. 21 ff in the section on 'Rural Agricultural Commons'; but it seems convenient to summarise together here matters which deal with agricultural improvements.

40. (a) (see 1876 Act, s. 4 'adjustment of rights') The matters which today require settlement, under a system of 'regulating' each common (but with the proviso that not all of the matters will need a settlement or re-settlement in all the cases) are as follows:—

Who have rights of common?

What rights have they, other than a common of pasture?

Are there any persons other than manorial commoners who can now reasonably claim rights?

How are 'heafs', sheep 'walks' etc. defined and bounded?

What limits should there be to the stock put onto unstinted commons and how to be determined?

Where there are stints, what is their local value in heads of stock per stint?

How are unused heafs and stints to be dealt with?

The same questions in relation to 'common pastures' and to 'common fields'.

41. *Notes.* The real trouble is not overstocking, but the non-use of their heafs or 'gates' by some of the commoners, with consequent and intentional overstocking of the 'live' heafs, the stock from which are able to 'trespass' onto the empty land.

The lord cannot claim to use for himself the land representing the difference between the gross amount of common as traditionally heafed and the net amount in use at any period by the commoners (Hunter 'Open Spaces etc.' ch. 1. p. 13).

It is a useful provision of the 1876 Act, which perhaps could well be adopted in suitable cases today, that 'adjustment of rights' (roughly catalogued above) may be employed without using any other and additional forms of regulation at the same time. And the same holds for 'improvements', next dealt with.

42. (b) (see 1876 Act, s. 5 'improvement' of commons.) The items listed in the section of the Act referred to are:—

draining, levelling, manuring ;

planting or 'otherwise improving the beauty of' the common ;

bye-laws for good order and for management.

43. *Notes.* The above points may be briefly expanded. Modern ploughing can rapidly do 'guttering' along small streams and through boggy patches, on the lower slopes of a hillside, and this will improve the grassland of lower hillsides very greatly. And it may be possible—again through the C.A.E.C.—to do liming from the air ; Captain Bennett-Evans' experiments on the east side of Plymlimmon are of much interest. Bracken on rough hillsides is not likely to be eradicated till the right spray has been discovered.

44. The great need is to improve winter pasture on the lower slopes, now that the price for wintering hogs is so extravagant. There can be no objection to temporary fencing in such cases, which however must be legalised quite formally in such a way as not to constitute legal inclosure ; and the cost of providing and maintaining stiles over (or gates through) fences must be laid unambiguously on the committee of management. Nor can there be any objection to shelter belts, for promoting an 'early bite' ; but there is the strongest objection to 'inclosure' of any commonable hill land by the Forestry Commission, which has a different aim and a very different effect indeed both on public access and on the beauty of the landscape. See Appendix IVB.

45. (c) *Roads, fences, gates.* The expense of fencing the roadsides, where roads run across commons, is great. It is suggested that this expense, and that of cattle-grids at the chief road-entrances onto commons, should be financed wholly from the now camouflaged Road Fund. It is motor traffic which has caused the up-grading of these roads across commons ; and the result is a spiral of more traffic, better roads, more injury, better roads. It is the motor vehicle which finances the Road Fund, so that what is here suggested seems a proper and just contribution to be made from this elusive fund. The really serious injury which has been done and is being done increasingly to hill farming and to the traditional and valuable use of commons, needs atonement as suggested. Here again the fencing, in this case the fencing not of re-seeded grassland and the like, but of the sides of a common facing on to roads, needs to be formally legalised, so that the fence *does not constitute any form of legal inclosure*. Step-stiles carrying a small notice inviting access to a regulated common would be provided at sufficient intervals to provide for public passage. For the passage of stock gates would be provided which could be kept locked and not made available for public passage.

46. *A note on fencing costs, etc.*

(a) The figures given at the Allendale (see Appendix I) inquiry held by the Ministry in 1951 seem to prove that the cost of fencing a large area of open common (23,000 acres) into separate allotments of freehold land for a large number of new freeholders, puts this idea of fencing in everybody quite beyond what is practical.

Length of post and wire estimated to be there required, 95 miles.

Cost per mile, £450.

Total cost, Allendale, £42,000.

To fence a really high-level boundary following a really craggy skyline, using five wires threaded through iron posts, might run out at the prohibitive cost of £1 per yard.

(b) *The appearance of roadside fencing.* Concrete posts are hideous in the landscape, and should be ruled out. Peeled larch costs least in maintenance and in time shows very little. But fencing should be set back as far as possible from the roadside, to ease the eye. Electric fencing does not stop hill sheep and would be 'ragged' by the passer-by.

47. The provision of cattle grids is greatly to be preferred, and is imperative, where there is no roadside fencing along edges of the common. No gate across a road can be expected today to be kept shut or indeed be expected to survive. It is true that stock commit no offence by straying on a highway which is crossing a common (Highway Act, 1864, s. 25), but as soon as they have passed onto the enclosed road at either end they can and do stray for miles, and their owner can be prosecuted for an offence which for his part is quite unpreventable. The fear of damage to stock on the roads is one main reason for the under-stocking of commons.

48. The various detailed suggestions made above in paras. (a) (b) and (c) have, so far as concerns ourselves and the 'open-air' interests of the country, this intent:—if conditions for commoners remain as adverse as in so many ways they now are, rural commons will steadily go out of use, the beauty of their landscape will be changed to much unseemliness and waste, and, as the commons do go into disuse, there will be a movement, difficult then to defeat, for wholesale inclosures. Then the great and valued area which this country now has of open country will cease to be available for access.

THE LAW AS EXISTING TO-DAY—COMMENTS AND SUGGESTED CHANGES—(Paras. 49-61)

49. *Law of Property Act, 1925.* Sections 193 & 194 are the Magna Carta both of commoners' rights and of the particular cause which we represent, namely access on the commons. During nearly a century there had been an increasingly liberal treatment by Parliament of the important social problems involved. The Metropolitan Commons Act applied to the commons of Greater London a treatment quite unthought of in the Inclosure Act, 1845, though the latter had itself taken the teeth from the earlier procedures; then came what one may call the Age of the Great Lawsuits, mainly in the London area, and concurrently the Commons Act, 1876, of which the preamble declared a statutory preference for regulation over inclosure—though inclosure, under a Provisional Order Confirmation Act, remained possible and is still possible. Then the Law of Commons Amendment Act, 1893, in effect revoked the Statute of Merton, and the Commons Act, 1899, gave a cheap and straightforward and encouraging way of protecting the smaller 'local' commons. Lastly, the 1925 Act proclaimed two outstanding principles:—

(1) except by the Minister's consent (and with allowance for exemptions by Parliament) there may in future be no inclosure of any land which was subject to rights of common on January 1st, 1926 (this is not in fact equivalent to, but it does suggest, a principle of 'once a common, always a common');

(2) free access is legally conferred for the purpose of air and exercise on all 'urban' etc. commons, while on any rural common, where the owner of the soil so declares by a deed, there can be similar access for air and exercise.

50. On the legal situation now existing, we submit the following comments.

(i) *S. 193 (2), Law of Property Act, 1925. Deeds declaring access on rural commons.*

The amendment which in the 'access' provisions of current law is foremost and first desired by us, is to extend to rural commons the automatic right of access (subject of course to the 'limitations' of proviso (b) of subsec. (1)) which is applied

by subsec. (1) to urban commons. We give leading importance to this extension of public rights.

51. It is to be noted that in the central and most visited part of the Lake District there are 25 square miles of technically 'urban' commons, to which s. 193 (1) for 'urban' privileges automatically applies. This great area is, in any normal use of words, rural; and when it came under s. 193 (1) twenty years ago and so was made subject to access—as the co-terminous and legally 'rural' commons were not—there were no complaints or difficulties. It is submitted that if *all* rural commons are now brought into the same status as 'urban' commons, not only would there be no greater difficulties than in the case named, but there would be all-round advantage.

52. And it must be remembered that the legal interest of the lord and the rights of the commoners remain undiminished. Indeed the commoners themselves (a point of interest which often seems to be forgotten) and/or the owner of the soil can at once apply to the Minister for 'limitations and conditions' on the right of access (proviso (b) to s. 193 (1), with subsec. (3)). At present, the only available control over a rural common lies with the owner of the soil or lord of the manor; for it is he alone (and not the commoners, who have in this respect no legal 'interest') who can bring an offender against good conduct to book, and this must be by a civil action for damages; this the lord is today quite unlikely to consider doing. But as soon as 'limitations and conditions' are made public—byelaws, that is; it is assumed that this term is avoided in s. 193 so that the Home Office may not intrude—then the lord can act by summary procedure before the magistrates, if he so desire, and, what is far more important, a commoners' committee, if legally constituted as in para. 28 ff. above in conjunction with the C.A.E.C., could proceed similarly. This would make action feasible and effective, in such cases as damage done to walls or sheepfolds, gates left unfastened, tins, bottles and other litter scattered, sheep chased by visitors' dogs and other displays of either ignorance or malice. (One assumes that, where there are such published byelaws, a member of the public, if he can secure the identity of the offenders, can also ask the police to prosecute.)

53. In addition to the 'limitations and conditions' of proviso (b) and subsec. (3), there are also the standing prohibitions of proviso (c) against vehicles, fires and camping. Thus any comprehensive list may be of some length; and one could mention long notices, in small print and on waterlogged paper, exposed on posts so tall that no one can read the print, with all the expense and trouble wasted. It is desirable therefore to set out the prohibitions in as few words as possible, and not in full legal exposition, e.g. in a series of 'NO's' ('Please No litter, No interference with birds or plants, No fires' etc.).

To sum up this matter of s. 193:—we can see nothing but advantage for the lord of the manor, the commoners, and the public in extending to rural commons the provision for access now available on urban commons.

54. (ii) *S. 194 (2), Law of Property Act, 1925.* We call attention to the difficulty of persuading, under the provision of subsec. (2), the relevant council, not excluding county councils, to take action in the county court to prevent small encroachments. We suggest that the committee of management—which we have recommended as the official regulating body of a common—should equally be empowered, in conjunction with the C.A.E.C., to take the action specified in subsec. (2).

55. (iii) *S. 193 (5), Law of Property Act, 1925. Minerals.* It is noted that the rights of the owner of the minerals are fully reserved; any statutory limitation upon these rights is therefore exercisable by the local planning authority alone. We suggest that it be considered whether any revised law of commons might not usefully include a declaratory clause, based on common law decisions made by the courts, that mineral extraction by the owner of the minerals is limited by the commoners' right to have sufficient grazing left for their need. We call attention to a sound provision in the Matterdale Award, 1879, Cumberland (for 'regulation'): the lord is to do as little damage to the surface of the land as reasonably may be, and he is to pay full compensation for any damage to works carried out by the conservators. This provision is a useful precedent. The Allendale provision is in striking contrast.

56. (iv) *S. 193 (6), Law of Property Act, 1925. Occupation of commons by Service Departments.* We call attention to Appendix II on the Defence Acts of 1842 and 1854, since these Acts invalidate all parliamentary protections of a common which have been built up later.

57. (v) *S. 194 (3) proviso (a), Law of Property Act, 1925.* On common rights extinguished 'under statutory provision', for water catchment areas or for state afforestation, see Appendix IV (A) and (B).

58. (vi) *Delimitation of boundaries (Commons Act, 1876).* It is assumed that this duty, if our suggestion as to statutory committees of management for each common be adopted, would be transferred to the Ministry acting through its county officers and would be accompanied in cases of dispute by a public inquiry (see para. 29). We point out that to delimit the boundary of a common or commons may in some cases involve delimiting a manor or manors. This is not always easy to do, but we suggest that points of doubt should be settled without a necessary reference to the High Court—though with an appeal to the High Court on a point of law.

59. (vii) *Public notice of commons proposed to be taken by Private Bills.* See Hunter 'Open Spaces etc.' edition 1896 p. 215, and Shaw Lefevre 'English Commons & Forests' p. 335. A few years ago the Standing Orders of Parliament for Private Bills were so altered as to cancel the previous most important requirement that all promoters of private bills must include in their statutory advertisements in the London Gazette and other papers *particulars of any common lands proposed to be taken.* This proved an invaluable aid to all societies and other persons concerned with preserving commons—and, one would have supposed, no less so to the Ministry of Agriculture. Why this excellent provision was in fact cancelled, is hard to understand. It is most strongly urged that the original safeguard given by it in the Standing Order concerned be re-introduced.

60. We wish to support the main point of what we have written above by referring to two authoritative opinions, one of sixty years ago and the other of ten years ago. In the final chapter of 'English Commons & Forests', 1894, the classical book by Shaw Lefevre (Lord Eversley), his leading recommendation for future policy was that *all remaining commons should be 'regulated'* (but not inclosed), and that for this purpose the liberal provisions should be used of the Metropolitan Commons Acts. In effect this is what we have above recommended. It is however clear that an actual parliamentary sanction by a Bill, which is what the Metropolitan Commons Acts do in fact require, could not be requisite for every scheme; that is neither manageable nor needful.

61. And fifty years later it is no less interesting to find John Dower, in his foundation report on National Parks submitted to Parliament in 1945, urging what is, in principle, the same thing. 'The first step for the National Parks authority, in providing and assuring rambling access, will be to get all commonable land in National Parks permanently 'opened' under suitable regulation, whether by applying Section 193 of the Law of Property Act or by some similar method. . . . The war-time power of the Minister of Agriculture to carry out through the County Agricultural Committees improvements on common grazings, and to apportion and recover costs, may prove well worth continuing.'

We think that the ten years since 1945 have confirmed the wisdom of these recommendations (National Parks in England and Wales; John Dower, Cmd. 662 B, H.M.S.O. 1945).

Appendix I

ALLENDALE, ETC. STINTED COMMON PROVISIONAL ORDER BILL (1956)

62. By an Inclosure Act of 1792 there was an inclosure of 15,000 acres of the waste of the manor of Hexham; the remaining 23,000 acres, which are the only surviving common in Northumberland, were at the same time stinted, and so remain. The 'unlimited' rights of common on the 23,000 acres were thus converted to 'common in gross'.

63. In 1938, after 19 years of previous negotiation, a local inquiry was held by the Ministry to discuss a proposal locally made for inclosing the 23,000 acres of common, the new freeholds to be in proportion to the stints awarded in 1800 under the Act of 1792. No decision as to promoting a Provisional Order Bill for inclosure was reached by the Ministry before the outbreak of war.

64. Some further revisions of the plan were made locally after the war, and in 1951 the Ministry summoned another local inquiry to discuss the whole matter *de novo*. The previous thirty years of negotiation then issued, in 1955, in the Draft Provisional Order now proposed to be brought before Parliament with the Minister's Certificate that it is expedient for this Order to be laid before Parliament as a Bill.

65. The leading provisions of the Draft Order (dated 5th October, 1955) are as follows (the numbering—(i), (ii) and (iv) below—is that in the text of the Order):—

(i) 'That there be reserved to the inhabitants of the neighbourhood and the public such right of access to the stinted pastures *as would be conferred by Section 60 of the National Parks and Access to the Countryside Act, 1949, if an access order as defined in Part V of that Act were in force as respects the stinted pastures, but subject to the provisions of the Second Schedule to that Act as to the general restrictions to be observed by the persons having such access.*'

66. *Note.* The Draft Provisional Order does not create an Access Order (M.A.F.F. have no powers at all under the National Parks and Access to the Countryside Act, 1949); it reserves for the public 'such rights of access to the stinted pastures as *would be conferred if an access order as defined in Part V of that Act were in force*'.

The words 'as if' there were in force an access order 'as defined in Part V' of the Act seem at first sight to suggest that all the various limitations on access which are contained in s. 60 and Part V here apply. But, if so, why is the Second Schedule of the Act (which is imposed on 'access' land by subsec. (4) of s. 60) mentioned, but no other of the limitations in the other subsections of s. 60 mentioned? So the inference to be drawn from the words 'but subject to the provisions of the Second Schedule' seems to be that subsec. (4), dealing with the Second Schedule, which has been specially picked out for mention, is the *only* subsection imposing a limitation which is to be applied to Allendale, while the other limitations contained in s. 60 do not apply to Allendale. (N.B. No objection at all is taken to the inclusion in the Draft Order of the Second Schedule; indeed this is welcomed.)

67. The Ministry in correspondence do not accept this view, that only the Second Schedule is applied; nor on the other hand do they maintain that *all* of the subsections of s. 60 are by the words quoted above from the Order applied to Allendale. On the contrary they hold that the proviso to subsec. (1) is applied, that subsec. (2) is applied, that subsec. (3) is not applied, and that subsec. (4) would have been applied if the Second Schedule had not been specially mentioned. It seems not unfair to say that such interpretation of the Order is not lucid and seems arbitrary. We return below to the important difference which there is between access on common land and access on ex-commons when inclosed and made subject to an access order. Owing to the importance of this distinction and of this Allendale case as a crucial precedent, we hope that the Ministry will take its Draft Order no further until the Royal Commission has reported and the problems involved have been carefully considered by the Commission.

We return now to the provisions of the Order itself.

68. (ii) in the provisions of the Draft Order reads: 'That in all fences inclosing the allotments to be made gates or stiles be placed at convenient intervals for the purpose of access as aforesaid.'

69. (iv) in the provisions reads: 'That the expense of making such gates, stiles or means of passage be deemed to be part of the expense of making the fences in which they are placed and that they be repaired and maintained in like manner as the fences in which they are placed are to be repaired and maintained.'

70. The other relevant facts derived from the Draft Order are these:—the 75 stint holders would have 11,250 acres allotted to them, and the lord of the manor 11,750 acres to be used as shooting moors (round figures). The lord surrenders

his sporting rights on the new freeholders' allotments, i.e. those on the lower slopes; and retains his right to dig minerals on or under the surface without paying anyone any compensation, over the whole 23,000 acres.

71. We now call attention to the crucial difference between a common affording *de facto* access and *ex-common* land inclosed and made subject to an access order.

All access agreements or orders so far made have been made over freehold land, on which there has been no right to go. To be given such a right is a clear gain, even though the new right is subject to the various limitations set out in s. 60 of the 1949 Act.

But in the Allendale case it is to be an access order (or the equivalent of that) over 23,000 acres which have been a common and which are now to be subdivided into freeholds. When the land was common, the owner of the soil could not plant more trees (or sell the land for planting), or dig more mines, than would still leave enough grazing, etc., for the commoners. This protection for their rights, afforded by the common law, was equally a protection of the common for the public, who as 'dis-punishable trespassers' exercised *de facto* access; for this public access, which, in effect, it is neither practicable nor worth while to stop, and which for so long now has been the basis of public defence of access on commons, is itself dependent on the rights of the commoners. When the commoners' rights are abolished by a legal inclosure, the *de facto* enjoyment of access by the public is also lost.

It follows that to put an access order on land which was freehold is a gain. But not so in the other case. For when the land was a common, the amount of mineral workings and of planting was limited in the way just stated; but when the land becomes freehold, there is no such limit. Nor does the Provisional Order for Allendale impose any; in other words it does nothing to negative the loss for the public which necessarily arises when an access order over newly created freehold land is substituted for *de facto* access over common land.

Similar considerations apply to 'excepted land'. In practice the acreage of this in Allendale may not turn out to be great, nor the actual position of it, as shutting off upward access from the various valley bottoms, too awkwardly obstructive; one just cannot tell. But the point is that one is left guessing in respect alike of excepted land, afforestation and mineral working.

72. In other words, the Order gives no security for the access which it purports to create (and which, in effect and in practice, is there now). As said above, we urge that this Order be deferred.

73. As explained previously in para. 44 we make no objection at all to 'excepted land in principle; nor to temporary fencing, provided that the deprivations of access are in fact temporary and that the area of land excepted for any reason is moderate. But we point out that there is no machinery at all in the Order either for making land 'excepted', or for publishing the boundaries of this excepted land, and none for carrying out the converse process. As with minerals and as with afforestation, the public seems to be put in the position of a partly blind man making guesses about something which is only half seen.

Appendix II

VOLUNTARY COMMONERS' COMMITTEES

The following examples are of interest.

74. (a) *Holmwood Common; Manor of Dorking (Surrey). Duke of Norfolk.*

Committee appointed in 1871 at a General Court Baron to act with the Steward for protection of the commons of this manor and the rights of all parties interested, and in particular to collect funds by subscriptions, and to prosecute in the name of the lord of the manor or otherwise all trespassers doing injury to the soil, trees or pasturage . . . and to provide such watch as may from time to time be expedient. It is recommended by the Homage that no grant of any portion of the waste be

made at a Court Baron without having been submitted to the committee. And that such committee may thin hollies and brushwood and apply the proceeds to the before mentioned fund.

The Duke of Norfolk's agent reported in 1944 that the committee still supervised the manor rights and did various repairs; and that if anything urgent occurs, trespass, encroachment, damage, etc., the committee refers to the agent who will consult the Steward. 'The subscriptions from residents pay a common keeper's wages and incidentals.'

Notes. Such a procedure depends on a 'residential' population. It is of interest that the lord of the manor still contemplated legal action by himself, and had not given up interest as a result of the Law of Property Act, 1922. At the same time it is sufficiently clear that this type of scheme is not at all one for any general application.

75. (b) *Horsell Common (Surrey, near Woking). Lord Onslow.*

Lord Onslow appointed the Horsell Common Preservation Committee in 1910. Matters dealt with:—fire prevention, unauthorised camping and taking of sand (any sales of this to be for the benefit of the committee), siting of G.P.O. poles, rides cut through the woods, etc. Revenue (about £225 p.a. in the 1930s) from subscriptions mainly. Common Keeper employed. 'In the first year or two a few prosecutions had to be undertaken; resort to this step now rare.' 'The Committee hope that commoners will continue to use their customary rights of grazing, estovers and turbary.' In 1934 (annual report) 362 vans and 388 horses were moved on.

Notes. As for Dorking above. Another example of voluntary and unofficial management, not based on any statutory 'regulation'.

76. (c) What next follows is an example of a recent voluntary committee formed for a very large rural common of many thousand acres in Cumberland (Eskdale; Lord Leconfield). This committee was set up by authority of the lord of the manor on the initiative of the committee's first secretary who however shortly afterwards left Eskdale and the committee ceased by its own inertia to function, and is now dead. But the list of requirements for action set out in paragraph (4) of the authorisation to the committee (which is therefore here transcribed in full) is of much interest, since it covers the essential needs for these large rural commons (Eskdale Common is not stinted, but in theory is governed by the principle of levancy and couchancy).

ESKDALE COMMONERS' COMMITTEE (1945)

77. *Letter of Summons.*

'The Lord of the Manor has now set up this committee, all commoners being members of it, under the constitution set out below.

It will be noticed that commoners resident in the parish attend in person: those not resident 'mainly or at all' in the parish may appoint a representative to attend in their place (if they so wish) subject to the approval by the Lord of the Manor of each person so appointed. I shall be glad to submit any names of any representatives proposed by absent commoners, if these are sent to me in sufficient time before the meeting.

The first meeting will be held at

The business will be to appoint a vice-chairman, to consider any proposals concerning the commoners' interest, and to take any action which is within the terms set out below.

H. H. SYMONDS, *Secretary.*

78. *Form of Authorisation.*

'The Eskdale Commoners are hereby authorised to act as a committee under the existing custom of the manor for their mutual interest, and this authorisation is given by the Lord of the Manor who hereby defines the powers and procedure of the Committee as follows:

- (1) The Agent of the Lord of the Manor, when present, is ex-officio chairman of the Committee; and the Committee is authorised to appoint one of the commoners to be vice-chairman and to appoint a Secretary (unpaid).

- (2) Any expenses incurred by the committee are to be defrayed from funds raised voluntarily by the Commoners from their own number and from any others interested in the welfare of the common.
- (3) In as far as any matter cannot be settled by the Committee itself in local negotiation it is to be referred to the Agent, and legal action (if any) is to be taken by the Lord of the Manor as owner of the soil through his Steward after consultation with the Committee, any expenses being defrayed from the Committee's own funds.
- (4) The Committee shall have concern, among other things, with the following:
 - (i) the condition of walls, fences and fell-gates, both on the boundaries of the common and also as concerns any fence on the common itself;
 - (ii) proper observance of traditional heafs;
 - (iii) proper observance of the limiting dates, etc., for the putting out of stock;
 - (iv) any illegal exercise of grazing rights and other rights by non-commoners;
 - (v) encroachments;
 - (vi) general maintenance of the custom of the common;
 - (vii) co-operation with the Lord of the Manor for due observance of the provisions contained in the Schedule of the deed made by the owner of the soil under subsection 2 of section 193 of the Law of Property Act, 1925, provided however that the Committee shall have no financial liability for the cost of any action which the owner of the soil may take or defend in connection with the provisions of this Schedule.
- (5) Owners of houses only, without land or any considerable land and therefore not exercising rights of common of pasture, shall not be summoned to the Committee hereinbefore defined.
- (6) Those qualified to be summoned may appoint some other person to act as their agent for so long as they desire, if the person so appointing does not reside mainly or at all in the Parish of Eskdale and also if the Lord of the Manor agrees to each such appointment as being in all the circumstances reasonable.

Appendix III

THE DEFENCE ACTS OF 1842 AND 1854

79. Since the Defence Act of 1842, to which the Act of 1854 was later added, it has been and today still is open to any of the service departments to acquire land for their specified purposes, and then to extinguish rights of common, without any reference whatever to Parliament for its agreement or even for its information. This Defence Act procedure was used during the war, though without any public knowledge (a case in point was the common land of Mynydd Epynt in Breconshire) and it is still operable. Moreover it is operable also by the Ministry of Supply—now one of the defence departments. It is true that s. 12 of the Requisitioned Land and War Works Act, 1945, required a 'positive' resolution from each House before common land could be acquired for the purposes of that act (viz. for the recovery by the state of the value of 'war works' etc. made or placed on the land); but that provision and that act neither repealed the Defence Acts themselves nor diminished the powers held by the service departments compulsorily to acquire land and on commonable land to abolish commoners' rights in secret. The ancient acts and their outmoded powers remain, as a surviving offence against democratic principle. The particular powers embodied in these acts of extinguishing common rights by the use of the relevant bundle of clauses in the Land Clauses Consolidation Act, 1845, need to be repealed in any legislation which may be brought forward about

commons. It is to be remembered in this and in many other connections that rights of common were not created by statute and, once extinguished, can never be re-created; extinguishment is irremediable.

Appendix IV

COMMONS INCLOSED UNDER A 'STATUTORY PROVISION' (LAW OF PROPERTY ACT, 1925, s. 194 (3))

A. Water Catchment Areas.

80. Where a large area of hill land is purchased by a water authority, both commoners' rights and access may be affected injuriously, in so far as the area is commonable.

81. This was realised from the time of Manchester's Thirlmere Act (1879), and those who were then championing the cause of commons secured statutory continuance by that act of 'the access heretofore enjoyed by the public to the mountains and fells'. But no protection was then secured for the commoners and today at Thirlmere on the area above the dam there is only one sheep farm left, itself managed by Manchester. One must however realise that, unless there is some special statutory provision, then an authority buying (as in this case) 10,000 acres becomes itself the owner of all the valley bottom farms, doomed to be drowned, which had rights on the commons, so that there are no 'commoners' left, for all the common rights are lost by 'merger'. The fact remains however that the great Thirlmere catchment area has been so administered that there is a regrettable under-use of its hill grazing grounds. This curtailed use of once common land is to be noted.

82. The next case which came before Parliament was that of the Birmingham catchment area of the Elan and Chirwen valleys in central Wales—with 50 square miles of common. Here an effective protection in the two respects was for the first time secured, by the efforts of the Commons Society. Both the commoners' rights were secured, and sheep with some cattle and horses still graze the area; and the public were guaranteed legal access for 'air, exercise and recreation' over the 50 square miles of common. This *jus spatiiandi* did not however, and quite reasonably, 'run' within the limits of deviation of the works of civil engineering. It must however again be remembered that those farm buildings which in fact do survive flooding, even in a great catchment of 45,000 acres, are necessarily few, so that full occupation of the land for grazing is not really feasible; while agisted stock cannot, within the terms of the act's special clauses, be put on it, so that there is still waste of grazing land.

83. These notable provisions in the Birmingham Act of 1892 have since become known as the 'Birmingham Clauses', and they formed a precedent of sterling value. The best known and most important of the acts which have followed the precedent is Manchester's Haweswater Act, 1919. Here on 24,000 acres all the common land (but not the walled-in fields at the valley bottoms, which were freehold) have been put under the same right of 'rambling access'; and the commoners' rights (where the farm buildings have not been drowned) have been preserved, for sheep and fell ponies though not unfortunately for cattle. Some farms lower down the main valley, of which Manchester did not buy the land, still come in to exercise their own rights of common, which, short of purchase of the land, could not of course be extinguished, and which were not under these circumstances lost by merger.

84. The Report (1948) of the 'Gathering Grounds Sub-Committee', appointed by the Ministry of Health, contains the following, among other, recommendations on the two matters of continuing agricultural use and public access:—

First (after criticisms of the under-use of gathering grounds, formerly commonable or otherwise) the Sub-Committee recommended that 'subject to (stated) safeguards, the land should be put to the utmost agricultural use'; and second that 'subject to (stated) safeguards, there is no reason to exclude the public from gathering grounds as such'. Here again, as was argued above, the public use and the agricultural use of the commonable hill lands seem to be two aspects of one claim. But

the matter requires the careful co-operation of two Ministries, those of Local Government (Water Supplies) and of Agriculture; and an equal interest in and knowledge of a group of problems by two quite different bodies is not always too easily found. So we call attention to the important bearing of water catchment areas both on the welfare of commons and on public access.

85. A further difficulty is that new legislative methods—necessary to save the time and energies of Parliament—have introduced a new complexity. Previously the acquisition of water rights and of gathering grounds needed a private local bill, which easily secures some publicity. But it is now possible to proceed by the more quiet and undemonstrative methods of a ministerial order, under the Water Acts of 1945 and 1948 and their skein of inter-related and difficult schedules. So measures may now be enacted which, for our part, we might well wish to have a better opening to question. This again is a reason to emphasise the mutually related obligations of the two ministries named; and of these the Ministry of Agriculture not only answers for food production but is the official protector of common rights.

B. Land Vested in the Ministry of Agriculture for Afforestation.

86. As stated above, no objection can be taken reasonably to the planting of shelter belts on hill commons; they can be most advantageous. On the low lying lands there can be no objection to the 'improvement', named in the 1876 Act, viz. 'planting or otherwise improving the beauty of' a (regulated) common—in effect the suburban commons. This last provision seems really to limit itself to commons in the lowland country; it is not easy to 'improve the beauty' of most hill commons by plantations. Their state as today seen, some of them a grand and noble landscape and some of them a different and more gentle landscape controlled from wildness by grazing, needs no 'improving' hand. But in any planting of any kind at all, both on the higher contours and on the low, it is not only a scientific judgment which is needed as to what will grow where and in this or that soil, but also the judgment of the landscape architect. Such a judgment properly based on the varying degrees of slope, the folding of the ground, the run of the stream beds, and the need to avoid any skyline planting, is in every way as necessary as the choice and the mixture of species. The aesthetic treatment of commons—still remaining as commons—has a high importance.

87. But any large scale *inclosure* of commons, for afforestation by the Forestry Commission, would meet with strong and wide opposition, as would any administrative change in the law which could make more easily possible the resulting damage to access on our hill country and to the beauty of the National Parks. Nor is it likely that the Forestry Commission would here wish to press any policy of compulsory purchase, enforceable against opposition by promoting a statutory order under 'special parliamentary procedure'; such a policy would be too unpopular.

If the Ministry of Agriculture will undertake a considered and continuing policy for the agricultural improvement of commons, there is no good reason for the Ministry to seek to acquire common land and then, as the Forestry Act, 1945, has it, to 'place it at the disposal of' the Forestry Commission to afforest.

Appendix V

THE RAMBLERS' ASSOCIATION

88. The Ramblers' Association has some 13,000 individual members; its executive committee and secretary are centred in an office in London, while local organisation and propaganda are carried out by a division of the country into 'areas', each with its own committee and officers. In addition to the individual membership there are some 360 affiliated clubs, co-operating in the work done nationally or locally by the Association itself; membership of these affiliated clubs is estimated at some 33,000.

The defined objects of the Association are:—To protect the interests of ramblers and to maintain their rights and privileges; to foster a greater love, use and knowledge of the countryside; to secure travel facilities; and to obtain public access to uncultivated mountains and moorlands.

The Association took a significant and leading part in the long campaign which brought to pass the Act of 1949. The interests and enthusiasm of the Association were, and are, in no way limited to the provisions of that Act concerning 'access' and the creation of National Parks, but involve equally the whole ideal of a well-informed and understanding use and enjoyment of the countryside.

The Association maintains a special 'Countryside Fund' for promoting or assisting defensive action at any point in the country where its own main aims are seriously threatened.

Examination of Witnesses

REV. H. H. SYMONDS, M.A., MR. W. S. TYSOE and MR. TOM STEPHENSON,
on behalf of the Ramblers' Association

called and examined.

1391. *Chairman:* May I say first of all how grateful we are for the exhaustive memorandum with which the Ramblers' Association has provided us. You will appreciate it will be impossible to ask questions on the whole of the memorandum; but I and other members of the Commission will select certain points. May I first raise the general principle which you do not seem to have put into the memorandum, though I think it is implicit. May I put to you one of the introductory paragraphs of the memorandum by the Youth Hostels Association, who are appearing before us this afternoon, to see if you agree with the general principle which they enunciate. They say:

'We think it important to recognise at the outset that the best use of our restricted acres may well in many cases be a multiple use, and that a prerequisite for its achievement is a spirit of tolerance among all the parties concerned.'

I think that generally accords with the evidence which we have received, and I wonder if you agree with it.—*Mr. Symonds:* I do not think we should disagree with that. Multiple use is certainly desirable. What we are standing out for in our memorandum of evidence is that the multiple use should not in itself involve legal inclosure. That is an important qualification.

1392. By legal inclosure, you mean distribution of the land in severalty?—Yes, with abolition of the commoners' rights.

1393. You do not necessarily object to fencing?—No, I think we have made that quite clear.

1394. There is one other general point which arises out of paragraph 52 of your

memorandum. We have in fact had the question of the right of access before us on other occasions, but we would like to look into it in more detail. The position is, I think, that there are three types of commons to which members of the public have a legal right and not merely a practice of access. First there are urban commons; secondly, rural commons where the lord of the manor has taken the necessary steps under Section 193 of the Law of Property Act, 1925; and thirdly, special statutory cases, such as those affecting the National Trust, where either under the statute or under some other document authorised by statute, a legal right of access has been given. Is this right?—Yes. The last would include important cases where the so-called 'Birmingham Clauses' under the Water Acts have been invoked. These are very important because they cover a large acreage.

1395. But any rambling on other rural commons is unlawful, is it not?—Yes.

1396. It is not criminal—we had better make that plain—unless there is malicious damage to property, in which case it does become criminal; but in all cases except where the lord of the manor has brought the common under Section 193 it is a tort actionable, I presume, by the lord of the manor or the owner of the soil?—*Mr. Tysoe:* Yes, I think that is correct.—*Mr. Symonds:* There is one point of law. We have stated that where the rural common is not under any statutory limitations, the only person who can bring an action for something which is a tort is the lord of the manor. It is not clear whether the commoners, if they could combine, could legally bring an action themselves, but it is so improbable it does not matter.

1397. Is the tort actionable without proof of damage at all? If you merely walk on a common can the lord of the manor, if he thinks fit, take action against you?—The commoners might perhaps also if there is a commoners' committee.

1398. Taking the lord of the manor, what you are asking is that that right on his part should be taken away from him without compensation or anything of that kind, simply because for many years past members of the public have normally had access to most commons. Am I putting your point right?—*Mr. Tysoe*: Yes, I think that is correct.—*Mr. Symonds*: When you say without compensation or anything of the kind, there would in fact be something of the kind in the imposition of the statutory limitations which could be put on. We are not asking for the right without that: we are asking for it with that. We are asking in fact for a general extension of Section 193 of the Law of Property Act, 1925.—In this connection a very important case indeed is the 25 square miles of common in the Lake District which are technically in an urban district and are open to free access. They were so made under the 1925 Act. There has never been one word of complaint or suggestion that the scheme for them was unworkable.

1399. Does it not depend on the use to which the land is put, whether you can ramble at will or must merely keep to footpaths? When the average ramblers wants to go out for a walk, is he normally prepared to stick to footpaths? I am not thinking of tops of hills, but of lowlands for example.—*Mr. Stephenson*: Yes. He would not expect to be permitted to walk across growing crops, but would follow footpaths. Once he gets into the open country he prefers to wander at large rather than along a particular line.

1400. If in the lowlands the common lands are put under crops and access is preserved through footpaths, the Ramblers' Association would not normally raise objections?—I do not think we would go so far as accepting that. First we would need to be satisfied it was necessary to put that land under crops.

1401. Do you want to take each case individually? Assuming that in a particular case 'the best use', in your phrase, 'of our restricted acres' is to put the land

under corn, would you agree to a proposal of that nature being put to a commons committee subject to precautions being taken to maintain public access? I presume from the ramblers' point of view a field of waving corn is more attractive than the sort of scruffy common or dense thickets we sometimes see?—We want both. We feel the issue really is whether or not it is necessary to put the common land under corn. We want to be assured it is absolutely essential that the land should be taken out of the common.

1402. I do not think anybody can say whether it is essential. What they can say is that the best use of this particular land is a multiple use, that is to say part of it under corn, part possibly as a wood, with rights of access still preserved. Is not that what is meant by 'the best use of our restricted acres', assuming the proposed uses are agreed by a local committee? I am not suggesting extinguishment of rights of common, but cultivation by the commoners so that they can make more money out of the land.—*Mr. Symonds*: I think that is a quantitative judgment. We would not agree with the argument that because corn could be grown on five acres, therefore it must be grown on those five acres. There may be, and in our opinion is, a very large amount of marginal land not common in the rest of the country. We have a paragraph on that in our memorandum.

1403. *Dr. Hoskins*: Of what interest to the commoners of one parish would it be to be told there is marginal land twenty or thirty miles away which ought to be used first?—None.

1404. *Mr. Arnold-Baker*: If you were dissatisfied on that issue how would you ensure that other marginal land was cultivated?—By and large it is the responsibility of the Ministry of Agriculture. It is for it to say that there is such a shortage of this and that in our production that it is necessary to bring more land under cultivation. They would have however to observe the principle of preserving commons.—*Mr. Tysoe*: There is in practice also town and country planning. In theory the use of every acre of land is properly planned.

1405. Let us suppose for a particular case you are right, and that in the ramblers' interest a particular piece of common ought not to be cultivated, but that a piece of land quite close by

in private ownership ought to be. How would you set about seeing that it was cultivated?—I think the county agricultural executive committee might be an answer to that.

1406. The neighbouring private owner would be required to cultivate his land in a particular way to satisfy the interests of the ramblers in the land next door?—In the interests of the public generally.

1407. *Professor Stamp*: May I put this hypothetical case to you, that in a certain county there is a great deal of open hill land, let us say, for the sake of argument, 5,000 acres, half of which is commonable and the other half is in private ownership. Now do I understand that you are insistent upon securing the right of access for the ramblers to the 2,500 acres which happen to be commonable, and that you are not really interested in securing access to the other 2,500 acres because they happen to be in private ownership?—*Mr. Stephenson*: We should be interested in both areas. Our whole campaign has been for the right to walk on land which is defined in the 1949 Act as 'open country'. If it is in that category, we want the right to walk on it, but not if it is cultivated.

1408. Is it not more important to the ramblers therefore to have access land demarcated under planning schemes than just to preserve those parts which happen to be commonable?—Yes, if the National Parks Act, 1949, is amended so that common land subject to Section 193 of the Law of Property Act, 1925, is not excluded from the access provisions of the 1949 Act. All open country, as defined in that Act, whether commonable or not, should be land over which the public are permitted to walk under certain conditions.

1409. That is why I suggest that ramblers will be better served by a change in point of view. Is it not much more important to secure that open land shall be available to access quite independently of ownership or commonable rights than it is to insist on the maintenance of access to common land?—*Mr. Symonds*: I do not agree with that. Common land is de facto open to access. We are crying for the moon if we want to get all open land in private ownership now brought under access orders or agreements. We shall not get it. We are contending for a defined need, not a vague ideal.

1410. I would suggest you are in train of getting it. Was that not the purpose of the access provisions in the 1949 Act?—We must distinguish very carefully between open country in the Act, which is given a particular colour on planning maps, and land over which there has since been imposed an access agreement or order. Because a piece of land is marked as open country on the county planning map, neither you nor I have any more right on it now than before 1949. It is only when open country as thus mapped is turned into access land by agreement or order that you have statutory access. It is most important to keep that distinction clear.

1411. But there is at present no legal right of access on the common land either.—One is perfectly prepared to take the risk of being prosecuted. The history of commons in the last hundred years since the outdoor movement began does establish a de facto right. We would not have it swept away because additional rights are claimed—not by us—on private land.

1412. *Chairman*: I have not very many questions of detail on your memorandum. First in paragraph 2 you say:

'We realise that if our still surviving commons had had any second rate, not to mention first rate, agricultural value, they would long ago have been inclosed.'

Can you tell us what is the evidence for that?—The evidence for that, I think, is history. Obviously in the course of the Inclosure Acts from, let us say, Tudor times to 1876, the best was taken first. That is common sense. I do not think anybody will deny it.

1413. Much of the evidence we have had is to the opposite, although admittedly a lot is poor land. May I make the point clearer from note (ii) in paragraph 6 of your memorandum.

'It is significant that of the 20,000 acres of common land requisitioned by the Ministry under Defence Regulation 51 during the war for cropping, the Ministry finally purchased, under Section 85 of the Agriculture Act, 1947, only some 5,000 or 6,000 acres to preserve permanence of cropping. This shows what an insignificant fraction of common land is economic for arable cultivation.'

Is it true that only the 3,000 acres—as the area has now become—which the Ministry has acquired, or is acquiring, are suitable for cropping?—I do not think we are any of us in a position to answer that question.

1414. *Professor Stamp*: Is the true explanation the obstinacy of the commoners in refusing any change?—In some cases, which the Commons Preservation Society went into fairly carefully—I happened to be a member of the Commons Preservation Society Committee at the time—the commoners asked for certain land to be purchased. Surely it is a fair inference that the amount which could be and has been finally purchased does not in the opinion of the Ministry exclude any very considerable amount of highly or economically cultivable land.

1415. Your statements are therefore inferences?—I think they are fair ones.

1416. May I put the case of a county in which all the land is of good agricultural quality? According to your assumption there could not remain in such a county any common land. It would already have been inclosed would it not?—*Mr. Tysoe*: Substantially, yes.

1417. But in the county of Cambridge, for example, all the land is of high agricultural value. There is no such thing as poor land existing there, but there are still commons.—*Mr. Symonds*: One must admit, of course, that particular point. There is some common land left of some agricultural value.

1418. Would you say of high agricultural value?—You are trying to commit me to a generalisation. I am trying to commit you to one.

1419. *Professor Alun Roberts*: Is it not a case that it varies very much from place to place according to the degree of land hunger, etc.? How much or how little common land survived would depend on the degree of land hunger which prevailed and the pressure for inclosure.—One certainly must agree with that. What brought inclosure to an end were the Corn Laws. There was a rather fumbling period for a generation later when nobody knew what was what. But for us to commit ourselves to a generalisation, as Dr. Stamp wants us to do, that there may be quite a large amount of valuable land left in the country which ought to be inclosed would demand that

we are at the minute, by general admission, in such a bad way economically that we must forego our treasured ideal of the protection of commons. Admittedly, ours is a new way of looking at commons. It is only one hundred years old, whereas agricultural use goes back to before Norman times, but public access is a valuable use and a social claim. We are being referred to from time to time as ramblers, but we are not standing for ourselves alone or the two-penny-halfpenny proportion of the population incorporated in the Ramblers' Association. We are looking to the long future. It is open to people, and they have often taken the opportunity, to say that such and such a footpath can quite well be closed, and the argument has been applied to commons, that very few people go to them and they should be closed. We have to look at the future and try to foresee what is to happen.

1420. *Professor Stamp*: Suppose I said that I did not think you were asking for nearly enough, that the root of the matter, and what the ramblers really desire, is to have in each part of the country either land which is public open land or other land, legally open to public access? Is that what is really necessary in all parts of the country, freedom to ramble on open land?—*Mr. Stephenson*: Yes, that is our real aim, of course.

1421. Some of the land suitable for that purpose may be common land, but much of it is not. Must you not really ask for more than you are asking?—I think we have been asking for that for many years. We have been campaigning, as Dr. Stamp knows, pestering Ministers and Members of Parliament and we thought we had made some progress in obtaining Part V of the National Parks Act, but we are now protesting at the way that it is being administered. We have quite recently given evidence at a public inquiry where there was opposition to the first access order made in the country by the Lancashire County Council. We were opposed there by water undertakings, sporting interests, and farmers. We objected to the decision of the West Riding County Council that no action was required in the county to provide access to open country. The Minister held a public inquiry at our request. We are awaiting his decision. Throughout the country we feel Part V has not been effectively administered by the planning authorities. That is all part of the prob-

lem of gaining access to uncultivated land. We must not weaken the protection of commons, because, as Dr. Stamp has agreed, the original idea of access was much wider. What is left we want to keep.

1422. *Sir George Pepler*: On paragraph 9 have you actual evidence of a tendency to grasp common land?—Yes, I think the Commission must be aware of the tendency. I am not saying the land is actually grasped, but there is a tendency when land is required for it to be suggested that common land should be used. I am a member of the Commons Preservation Society's Executive Committee and every month in the Secretary's report there are cases of proposals to do this and that on various commons up and down the country. I can mention a few instances. In 1943 the Minister of Agriculture refused consent to the inclosure of part of the village green at Elsdon in Northumberland as an extension of the churchyard. In 1945, the Epsom Town Council sought to take 42 acres of Epsom Common for temporary houses. In 1946 the Minister of Health requisitioned 23 acres of Wanstead Flats, part of Epping Forest, for temporary houses for the East Ham Borough Council. In the same year, 1946, the West Ham Borough Council applied to the Minister of Town and Country Planning for compulsory purchase of 163 acres for permanent housing.

1423. Was not that a case of looking for open land? You think it was picked on because it was common: was it not picked on because it was open?—It was, I suppose, open land within reach of West Ham. In 1952, the East Ham Borough Council wanted to build schools on Wanstead Flats, and the Minister refused to confirm the compulsory purchase order. More recently, in 1954, the North Yorkshire Moors Park Committee refused planning permission for the building of two houses on common land at Hutton-le-Hale. The Kirkby Moorside Rural District Council were very annoyed about that, and in fact condemned the National Parks Commission for daring to intrude in their territory. They appealed to the Minister of Housing and Local Government who upheld the Committee's decision. Then there are the Service Department cases—the Surrey and Hampshire commons, Dartmoor and Fylingdales. We are not saying that these

are all cases of actually grasping, but of a tendency to turn to common land, and I think that is one of the reasons why this Commission has been appointed.

1424. *Chairman*: So far as the law is concerned, in some cases is it not more difficult to acquire common land than to acquire private land?—*Mr. Symonds*: I think it is important to realise the nature of the threat to Wanstead Flats—part of Epping Forest—which was secured and protected by an Act of Parliament in the 1870's, after years of sweat and toil by public spirited people, and the expenditure of thousands of pounds in what has been called the most expensive law tribunal in the history of the world. That land was attacked by two borough councils to obtain it for house building when it had been secured by public subscriptions and private sweat and protected by Act of Parliament.

1425. As far as we can see from our figures, common land is between four and five per cent. of all the land in England and Wales. Would you think the compulsory purchase orders which have been made in the case of commons since, let us say, 1920 are in the same proportion or greater or less than four in five per cent.?—I could not possibly answer that. The great abstractions from the fund of common land are made by the Service Departments and water undertakings, as well as in such cases as Mr. Stephenson has discussed. It is a matter of common observation, to read in the local papers in any county in the country, that rural district councils are always saying that it is awfully difficult to find land for houses, so what about using the common? That is going on everywhere.

1426. Is one explanation that many commons are not being used, at any rate in many lowland areas, but are simply becoming impenetrable thickets?—Where they are impenetrable thickets that would be a contributing cause.

1427. *Professor Stamp*: In paragraph 9 you say that it has been pointed out that within 60 miles of London much land is uncultivated. If it is farm land which is being wasted the Minister of Agriculture has power to take appropriate action. Have you evidence that it is wasted land, or is it a casual statement? Could you say whether it has been investigated?—I do not think we could any of us say that it has been statistically

investigated. It has been stated in Parliament in the debate on commons, and was not contradicted by the Minister of Agriculture.—*Mr. Stephenson*: It is a statement based on travel and frequent train journeys. One must feel there is a good amount of land not being made the best use of, but obviously capable of improvement.

1428. *Mr. Floyd*: You include old gravel pits now full of water?—I would include land that was badly drained.

1429. *Mr. Evans*: Would you care to give an example of existing farm land which is not being farmed to full advantage?—One case which comes to mind is the North Yorkshire Moors. Going over the road from Pickering to Whitby, if you stand on a height near Saltergate, you will see there some very good land looking quite rich, and adjoining it land of an equal character which has been allowed to go back to heather and rushes.

1430. *Professor Stamp*: May not the capital cost of reclamation be such that the owner or occupiers are unable to entertain the improvement necessary? If it is a flagrant case of bad farming action can be taken at the present time.—Surely the argument as to capital cost of reclamation will apply also to common land.

1431. *Mr. Lubbock*: Returning to the question of Service Departments, when they or the Ministry of Transport and Civil Aviation, for instance, occupy common land, they may propose to make the purchase outright. Have you any suggestions for the kind of provisions which should be made to secure that if in future conditions change and the Department no longer requires the land, there should be an opportunity of restoring it to common use?—*Mr. Symonds*: I have been present at a number of public inquiries since the end of the war. At some it was agreed in quite general terms that if the Departments did not use all the land for all the time or gave it up they would allow the commoners to exercise their rights. Alternatively, as in the case in Brecknockshire, they obliterated the commoners' rights under the Land Clauses Consolidation Act, by legal process. Rights of commoners have been created by common law and custom. Those rights can be abolished by statute law, but statute law cannot put them

back, and that is the essential point to realise. You may abolish common rights by law but you cannot recreate them unless you change the law enabling them to be recreated.

1432. *Sir George Pepler*: If the Service Departments undertake to restore the land in some cases, do they then make a register as far as they can of the existing commoners?—If I can give you an actual illustration of common rights belonging to farms owned by an Oxford college, Jesus College. I do not think the War Department made any register at all. I have never heard of one. It was gone into rather carefully in the 1940's, but the Department simply said the farmers were not commoners and the rights had been legally abolished under that Act.

1433. *Dr. Hoskins*: I am not quite clear about the total inability to create new common rights. I think there have been cases where a Department has taken a piece of common land and offered another piece which had not previously been common in lieu, saying this was to be common henceforth.—Under statute, Section 194 of the Law of Property Act, 1925, common rights on one piece of land can be abolished if equivalent land is conveyed and accepted in lieu by the Minister of Agriculture.

1434. So it is possible to create new common rights if one wished?—When they arise from the exchange of land, that is true, but if it is a large area one cannot effect this.

1435. Is it not possible for a Service Department, for instance, to withdraw from land which had been common, where the right had been extinguished, and to restore those rights by the same procedure?—*Mr. Tysoe*: I do not think it is possible under present law. We can perhaps visualise a change in law which might allow it, but how it could be worked we cannot visualise.—*Mr. Symonds*: Generally speaking, this method of substituting some other land for that which is taken is done on a small scale. It is a trifling procedure in quantity.

1436. It may have been trifling in the examples that we have so far had, but is not the principle there and could it not be applied to an extensive area?—The principle is there if you can find the extensive area, but, roughly speaking, I do not think you can.

1437. *Mr. Arnold-Baker*: To preserve continuity by exchanging land is one thing but to extinguish and then revive rights with a large gap in between is quite another, is that so? By, shall we say, 30 years later, the recollection of the rights might have been lost. Is that one of your difficulties?—It is. One way round the difficulty, which has not been tried very largely but which was applied particularly in Dartmoor, has been that the War Department has said, 'We will not abolish the common rights, but we will take the commoners on as our tenants.' This is not really a legal procedure. The War Department land agent happened to be a sympathetic person and undertook he would not apply the Land Clauses Consolidation Act.

1438. *Chairman*: Regarding this question of revival of rights may I refer to the second part of your paragraph 29. I would assume that part of your difficulty is that many commons are already becoming useless from the point of view of public access because of the failure of commoners to exercise their rights and the gradual disappearance of the commons under scrub growth. We have examples where quite clearly commons are becoming completely overgrown and access by the public impossible. You deal with that in paragraph 29, and at the end you say:

'If a case arose where there was no effective exercise of common rights, it would be a part of the Land Commissioner's duties to revive such exercise.'

How is that to be carried out?—There must have been commoners previously on that common. Their rights may have been allowed to lapse by non-use. We should be in favour of bringing in what would be in effect a new kind of copyholder and creating common rights. We want a change in the law as I have said.

1439. You mean the owner of the land should be encouraged or perhaps forced to let stints?—*Mr. Tysoe*: Possibly the commoners' committee rather than the owner.

1440. *Professor Stamp*: Would you not agree that failure to exercise common rights is the result of present day conditions whereby those rights have little or no value in modern systems of farming, with their attested herds for instance. The very fact the common rights are not exercised is an indication that the present situation is wrong.—*Mr. Symonds*: In our opinion it is an indication that the

system wants to be re-examined with clear thought, not to be swept away. That is our case.

1441. *Mr. Floyd*: Suppose in a large area of common in, say, south east England, nobody has in fact exercised any common rights for 30 or 40 years. Is your suggestion that grants should be authorised by somebody for clearing the common?—*Mr. Tysoe*: I do not think so. Our proposal for grants is for what we call rural commons. The Surrey commons would be urban commons, mainly for recreation.—*Mr. Stephenson*: Would it surely not be the first task to find out why the common was not in use, to investigate why it has become derelict, and whether something can be done to make it more feasible to use it?

1442. *Professor Stamp*: Suppose I suggested that the first essential was not only to encourage the lord of the manor to exercise his rights, but to give him certain rights of use of the common which he does not possess at the moment? The case I have particularly in mind is where the National Trust has become the lord of the manor. The National Trust under its statutory provisions has a certain right to carry out tree planting which the ordinary lord of the manor has not. Would you agree that something should be done, not only to encourage commoners to exercise their rights, but to encourage the lord of the manor to do the same—give him for example the right to plant?—*Mr. Tysoe*: It is a point we have not considered at all.—*Mr. Symonds*: The furthest we went was that we suggested the lord of the manor could be a member of the committee of management. Regarding planting of shelter belts and on a small scale for purposes of landscape beauty, if the lord of the manor likes to do it, let him. I agree he cannot at present.

1443. *Mr. Evans*: Would the shelter belts be for the purpose of improving the agricultural side?—Yes. Probably on the commons in the home counties there is so little agricultural use that shelter belts as such will not be worth while unless all the land is fenced, and then the expense will probably outweigh the results. You will no doubt have evidence before you later on which will have useful information about the cost of fencing, but nobody has considered, as far as I know, the cost of fencing in the

home counties. We do not want fencing there if we can help it.

1444. *Professor Stamp*: That raises a very wide question. What sort of land do ramblers like rambling over?—*Mr. Stephenson*: There are as many different tastes as there are ramblers. Some want the wild country; some like downland; others prefer the more rugged country of North Wales or the Lake District. Others again find their real taste in the Pennines and moorland heights.

1445. From the agricultural point of view, one might say that some regard the optimum use of common land as improved sheep grazing, others as cultivation of crops; still others put the optimum use as one or other form of afforestation, and the production of trees. Would you agree a policy of the maximum use of land might be decided on that basis?—I think that in considering any use of commons we want to take into consideration their value as places of healthy recreation or of some beauty. We feel it is essential in this small island that in considering what you do with the existing commons, it should always be borne in mind that they have a value for healthy recreation.

1446. Ignoring high altitude commons there are two fundamental difficulties. One is that the natural vegetation of land according to the climate of this country is various and unless managed otherwise will pass through grassland, scrub and eventually become forest. The second point is that there is a very strong tendency—I will not say particularly amongst ramblers—to look at the present position, the status quo, as being the one to preserve. If the common is open with young trees, keep it as such; if wooded like Epping Forest, again keep it as such; but that is not necessarily the best form of vegetation under management. Do you think the Ramblers' Association would be against change?—Not all changes, but certainly, as you know, we have been against some changes, particularly where the Forestry Commission has blanketed great masses of hillside, as in the Lake District and other places. That is the sort of change we cannot accept as desirable.

1447. We have seen some formerly scrub covered common land which is now a beautiful stretch of young corn. Is it not just as attractive to ramblers?

—Yes, except that they have lost a place where they can walk.

1448. *Mr. Floyd*: Can I return to the practical point of commons in the south eastern counties where no common rights are exercised? Do you prefer to see those cleared and fenced and grazed to keep the common rights going, or would you prefer to see them left scrub? It does not seem common rights can be reintroduced there unless the land is fenced off against motor cars and the scrub cleared. That is the choice over a large area of country. If you want to get the common system going have you not to clear and fence? If you want to keep the scrub what chance have you of reinstituting new common rights?—*Mr. Symonds*: I really think our memorandum makes it clear that we are not in favour of leaving waste and scrub. But we do put in a caveat. The matter of fencing is a very difficult business and wants treating with great care in the landscape. I do not think one will get much contribution from commoners or any committee of management in the home county common areas. There has got to be a Ministry of Agriculture system in the first instance.

1449. Would you prefer as a lesser evil to see fences and water supply and grazing rights rather than leaving the common derelict?—Yes, but I would like to put a caveat in. All evidence, written or spoken, on this subject seems to be confined to a consideration of the home counties. The great areas of commons in this country are north of the midlands, including Wales, and they are the commons which are of primary importance for agriculture. It is the great area of hill commons which are of great importance.

1450. *Chairman*: Would you say that your memorandum primarily had in view these hill commons and that you have really paid very little attention to the lowlands?—*Mr. Tysoe*: I think we have tended to over-emphasise the hill commons. We had the feeling other people were going the other way.

1451. *Professor Stamp*: We have already had evidence that, whereas some of the remoter commons in the west country were formerly visited by walkers or ramblers, ramblers are now very rarely seen on them because they have risen in the world, have acquired motor cars and are beginning to lose the use of

their limbs. Whereas rambles were frequently seen in the heart of Bodmin Moor, they are not seen now unless they can get a certain way by motor car before they start their walk. Would you say there was a diminution of the use for walking?—*Mr. Stephenson*: It is difficult to say. One hears this from time to time, but I do not know how one can arrive at a census of use of those remote areas. I remember one of the first excursions the National Parks Commission made was to the Peak District. One or two members told me afterwards that they had not seen any rambles. I said that they could not expect to as they had been motoring round, but if they had gone to Kinder Scout they would have seen some. How can you tell? I have been on many a stretch of moorland and thought I was the only person there but was surprised to find that many other people had crossed it on the same day. I tried to get some statistics of the people who went over the Pennine crossing from Teesdale to Appleby via High Cup Nick and I was told that in 1948 3,000 people had signed the visitors' book at Birkdale Farm. They were only the people who had called there for tea with their lunch. I am reminded of a day when I led a party of M.P.s. over the route. Ninety people signed the visitors' book that day but we did not see anybody.

1452. I think, of course, there is a change of emphasis in National Park areas which are recognised areas of particular beauty and those areas which are not, in the public estimation, so noticeably attractive. Is there the difficulty also in many parts, that not only is there not a visitors' book but the farm itself is now derelict?—*Mr. Symonds*: I hope we shall not be too much influenced by this argument, because we must look a long way ahead and habits may change. There may be a great development of outdoor walking. You cannot tell. You must not give away our heritage on a basis of a shoddy construction of statistics.

1453. I am now going back to paragraph 11, where you say:—

'No classification of types of common quite suits the facts.'

Would you agree it is very necessary to have a list or register of commons and some classification?—*Yes*.—*Mr. Tysoe*: Ultimately I think we would like that. I think it is desirable to have a complete record.

1454. You really would want a list and to decide the category of each, would you not?—*Mr. Symonds*: It would have to be done very gradually. Supposing your commission recommended the construction of a register of commons and still more recommended the construction of a register of commoners—that is a job for years, and must be started at the point in the country where it is most necessary.

1455. *Chairman*: You would agree with the evidence of the Commons Preservation Society on that point?—*Yes*.

1456. *Professor Stamp*: Do you think that you can have land planning as we have it at the present time for the whole country without having a register of commons in each county concerned?—*I think there ought to be one but I have yet to meet the county council which is unhappy in its ignorance, except for one in East Anglia, I think.*

1457. *Mr. Arnold-Baker*: To what use would you expect your Association to put such a register?—*Mr. Tysoe*: I think it probably would be useful in some cases to know exactly where common land was defined and to know the lines of demarcation.—*Mr. Symonds*: I would suggest it would be very useful to the outdoor societies to have such a register in this respect, that they could then bring pressure or persuasion to bear on the Ministry of Agriculture to get on with the business of rehabilitating commons in any place where it is most urgent that should be done. Unless there is a voluntary society pressing from outside there is a very considerable risk that nothing may happen at all.—*Mr. Tysoe*: There is one case in Lancashire that occurs to me where a local water authority tried to prevent rambles using a particular piece of countryside. People were looking round for a means of opposing that. They suddenly realised it was urban common land so that there was a legal right of access. That was solely the result of historical research by a voluntary society.

1458. *Chairman*: On 'urban commons', I seem to see in paragraph 13, and also in paragraph 37 (c), a certain prejudice against golfers which I rather wondered at. Is it not the case that where there is a golf course the problem of keeping the common in some sort of order is solved, so that access to it be-

comes possible?—*Mr. Symonds*: I think that is so, provided you have access. I do not think we have any prejudice against golf courses.

1459. Paragraph 37 (c) says:—

'it is to be regretted that so little use has been made of the 1899 Act to provide ground for cricket or football.'

It refers to football, but not golf.—*Mr. Tysoe*: I do not think that is intentional. We have no prejudice against golf, but there is a slight tendency the other way for golfers to want to shut out the public.

1460. *Professor Stamp*: Have you any views about the other uses of the commons for open air and exercise, riding for example?—The more the better.

1461. Do not galloping horses destroy paths for ramblers? I have in mind a common where the use of a path for horses is continuous, churning it into a sea of mud. In summer it dries hard and is unwalkable.—*Mr. Stephenson*: We find that particularly on downland country; where there are bridle roads, the riders have as much right to be there as we have. Much more serious is the growing use of these tracks by motor cycles.—*Mr. Symonds*: On that point, the owner of the common at present is the only person who can effectively prevent, if he would, the mis-use of bridle roads on common land by motor cycles; there is nobody else who can. The law is practically unenforceable, and any revision on that point which the Royal Commission can recommend would be valued.

1462. *Sir George Pepler*: Is there no law to prevent a motor cyclist using a bridle way?—*Mr. Stephenson*: He can only use it under 'lawful authority' which at present means with the permission of the landowner. There is an amendment down to the Road Traffic Bill* at present before Parliament that would require the consent of the highway authority. It is a very difficult matter. Motor cycle 'scrambles' are particularly troublesome.

1463. *Mr. Floyd*: Is it not rather difficult to expect the lord of the manor to stop them when he has no financial benefit from the common?—*Mr. Symonds*: That is one of the many

results of the breakdown of the manorial system.

1464. *Chairman*: Paragraph 28 (1) discusses schemes of management, I think, on the lines suggested by the Common Preservation Society, but you also have a paragraph which I have not quite understood. It is the second paragraph of 28 (1):

'Although, as has been said, no two schemes will be alike and therefore a committee is needed for each common separately, there may none the less be sufficient business involving decisions applicable within say a county or a part of it to justify or require some kind of two-tier arrangement, with a joint committee meeting at some convenient place to take joint decisions.'

Can you explain what is meant by that?

—*Mr. Tysoe*: I am sorry, but I am afraid we are a little vague there. I think it is something which might arise as development goes on. What we visualise is a committee for each common, with its open air and other interests. In practice that might be very difficult. I do not know how many commons there are, say, in Merioneth, but if there are a dozen it would be very difficult to find members of the Youth Hostels Association for example able to go to mid-week meetings. We were therefore feeling our way towards a two-tier arrangement by which county committees might generally supervise commons and be above the individual commons committee itself in some way. I am sorry we have nothing precise to recommend on this.

1465. Is the system in operation on the Bodmin Moors, where there is a committee for the whole group of moors and a sub-committee for each separate moor the kind of thing you have in mind?—Yes, I think so.

1466. *Dr. Hoskins*: On that point, for rural commons you suggest there should be a majority of commoners on the management committee. Would the power to make decisions be by simple counting of votes and not by some kind of proportional weighting of them?—*Mr. Symonds*: It is suggested that in matters of expenditure for agricultural improvement, obviously no one except the commoners should exercise a vote. It would be quite improper for any of us to be a member of a management committee and to exercise a vote which would influence

* Enacted as Road Traffic Act, 1956 (see s. 12).

the amount of money to be spent by the commoners on agricultural improvement.

1467. But whatever the question being discussed by the management committee, the commoners could always theoretically carry the day. What would happen if a majority of commoners decided it was in the best interests of the common to inclose certain land for arable cultivation? What would happen in a case like that where the commoners themselves decided to make such a change by a majority vote?—I think the answer is given in our memorandum—in a case of internal conflict, which is not resolved, there must be appeal to the Minister.

1468. Will that not mean that most majority votes on important questions would be regarded as matters of conflict?—No. Suppose the commoners want to rebuild a wall or something that involves expenditure on hill farming or qualifies for a common land grant. Unless it involves very definitely an amenity aspect or access difficulty, those present at the committee who were not themselves commoners would not exercise a vote, but if they felt some proposals were definitely injurious to access they would have the right. The constitution would need careful drafting.

1469. So in fact your majority of commoners on the committee of management would not really have the last word on the best use of the land. Do you not evade the question of arable use of common land in various paragraphs, including paragraph 2, paragraph 6 and also paragraph 30, where you have a parenthesis simply saying:

'had they been agriculturally self-sufficient, they would not have escaped the old inclosures.'

Is that not evading a problem that might very well arise in a number of management committees?—Most of my experience is north of the midlands and this does not apply to some of the home county commons but I must say we felt, and I myself feel strongly, that the proportion of commons suitable to form arable land is very little.

1470. *Professor Stamp*: May we follow this up by the specific case of Hatherleigh Moor where some 400 acres were ploughed up during the war and were extremely successful from the point of view of arable cultivation. What is to be the future of such a tract as that, not by

any means small, but on the contrary very extensive, giving good yields but which in view of the strength of the commoners' association it is likely to be handed back and go back to the old condition of poor grazing? It is a typical case.—It would not go back to a condition of poor grazing if our scheme were a reality.—*Mr. Stephenson*: Could I first of all ask Professor Stamp if he would say this is a typical case? Are we to assume there is a great deal of land of that character in the country?

1471. *Chairman*: Do you not tend to use absolute terms, as in that quotation from paragraph 30 just referred to by Dr. Hoskins? One immediately thinks of exceptions to your statement. No one indeed can say whether those are exceptions or the rule, but are there not qualifications to almost every generalisation?—I understood Professor Stamp to say that Hatherleigh was a typical case. I question whether it is.

1472. At any rate can one lay down terms as you do? You say for example that you would emphasise most strongly that commons cannot survive as grazing lands unless they are grant-aided.—*Mr. Symonds*: It would be better to put emphasis there on commons now debilitated. That is what is intended.

1473. But is a common capable of being self sufficient under present conditions when, as the law stands, it cannot be fenced without the benefit of the neighbourhood coming in? I am merely suggesting possibly some of these absolute terms might be qualified. Are there not exceptions to every general rule?—Yes.

1474. *Mr. Floyd*: May I return to the question of voting and the management of hill commons, say, in the north of England. Is it not quite likely a conflict would arise between commoners and other members of the committees? The commoners on the committee would say, 'Let us close part of the common for the next three or six months.' They might have a majority. The other members would probably want to oppose such a resolution, and it seems to me that sort of dispute, which is likely to arise, would come to a Minister's enquiry. I feel the commoners, although they might have a majority, would then have very little say in the management, even though it might for instance be essential for them to be able to enclose

the land temporarily to prevent the risk of fire if it were planted, or against dogs savaging sheep if it were not.—*Mr. Arnold-Baker*: Have you also considered the time factor in this matter? By the time you have written to the Ministry and got your enquiry, there may cease to be any point in settling the controversy anyway?—*Mr. Stephenson*: First, on Mr. Floyd's point, the answer is that it would be impracticable to enclose an entire common because of the possibilities of fire, unless it were a very exceptional common with no right of way over it. The National Parks Act does provide that in the case of access land the Minister of Agriculture can close land where it is liable to fire in a period of drought. What is done in that case, I think, might apply to any common land.

1475. *Mr. Floyd*: The Forestry Commission generally speaking encourage people to visit their woodlands because they want people to understand them better, but at certain times, particularly in March, when there is a very high fire risk, they reserve the right to close their forests for about three weeks. It seems to me those are the sort of practical questions which the commons committees would have to decide, and which would be difficult to administer unless one body could settle them on the spot. It is no use arguing about whether they should close a common from 31st March to 1st May, and for those discussions to have to go to a Minister. Have you any suggestions on this question of voting—how far commoners should have a determining voice?—*Mr. Symonds*: One has to remember that, whatever is done on Forestry Commission land, rights of way cannot be closed if they are established rights. I can foresee great dangers if one is going to allow an exception to the present law, under which a common may not be closed permanently or temporarily, in favour of a local committee of management which could then say its common is to be closed for April and May.

1476. *Chairman*: You are assuming there are rights of way, but on many commons are there any?—Not perhaps on some small ones.

1477. *Mr. Floyd*: Did you not also tell us what the rambler wants is not only a right of way but to walk where he will?—There is a really serious risk to the

right of access as it at present exists on commons. As to what Mr. Floyd has stated about the management committee, I do not think we should give general acceptance of his point.

1478. *Chairman*: You are asking, are you not, for a new right of access which does not exist? Is that right to be absolute, or is it to be qualified by using the land in the best possible way?—We are asking for the same rights as exist over Lake District fells under Section 193 of the Law of Property Act. Of course, this would allow for the statutory limitations and also for any additional 'limitations and conditions' which are agreed between the owner and the Ministry. I do not really see that the difficulty is very great.

1479. Does that mean that you are not asking for an absolute right of access, but on the terms of Section 193?—Yes. Application to the Minister for special restrictions as authorised by Section 193 would be made by the commons committee or lord of the manor or anybody else.

1480. The committee would be at liberty to oppose restrictions?—Yes, it would.

1481. *Sir George Pepler*: On paragraph 35, do you intend that the special 'common land grants' should cover the running expenses of the management committee?—Certainly, running expenses would be part of the administrative expenses which the county organisation of the Ministry of Agriculture would carry. I have not worked that out in detail, but they will probably not amount to very much. I doubt if we would suggest that out-of-pocket expenses should be made to members of the management committee.

1482. *Chairman*: Where there are such committees in existence already, whether under statutory authority or otherwise, they often have the greatest difficulty in making ends meet. Would you suggest that the deficit should be met from national funds?—A grant of at least the same percentage as is granted in hill farming schemes should be paid to such committees.

1483. *Mr. Evans*: Do you then suggest an agricultural grant which would possibly be used to cover the maintenance of the amenity of the common?—*Mr. Tysoe*: I do not think we visualise a common land grant as covering 100 per cent. of the expenses, either agriculturally

or recreationally. We would regard it as being for the total expense without relation to any particular type.

1484. Would you put it on a national basis rather than as a charge on rates?—*Mr. Symonds*: In some cases there are charges on the rates now. Under the 1899 Act, and of course still more under the Metropolitan Commons Act, expenses may be charged on the general district rate for improvement of the common for recreational and social uses. The difficulty with those two Acts is that they do not bring agriculture into any relation with the social and recreational uses of the same land. That is where they break down. They were passed in the era of agricultural depression and the two things are on lines which never meet.

1485. *Mr. Arnold-Baker*: In paragraph 37 (c), you say:

'Where a common is close to a village and the contours of the common are not prohibitive, it is to be regretted that so little use has been made of the 1899 Act to provide ground for cricket or football.'

Then you go on to say:

'It must not be assumed that our claim for the "recreational" use of commons is limited to cross-country walking and hill climbing.'

But local authorities in fact provide facilities of this kind and are providing them in increasing numbers elsewhere than on commons. Why do you want to put them on commons?—*Mr. Tysoe*: I think it is a question not so much of wanting, but of not objecting to.—*Mr. Symonds*: There are small rural commons close to villages on which the district council could spend money from the general rate on providing cricket or football pitches, but it is not very often done. This is a quite simple means of supporting commons and we put it forward as a suggestion. The district council does not have to buy the land.—*Mr. Stephenson*: It is coupled with the fact that in many of the inclosure awards a certain amount of land was allotted for the express purpose of recreation, and not necessarily for a village green.

1486. The local authority could spend money on that anyway?—The point there is that generally they have not done so.—*Mr. Symonds*: It all depends on the terms of the particular inclosure award under the 1876 Act. Under that

act in most cases the valuer laid down a method of raising money from those benefiting from the regulated or inclosed common, but I do not know of a case where provision is made by the valuer for looking after expenditure on recreation.

1487. The parish council can do so, can it not?—I am afraid I had forgotten that.

1488. *Sir George Pepler*: In paragraph 37 (a) there is a statement that parish council control had not produced good results. I wondered what evidence you had for that?—I think that sentence is a little bit loose. We were there quoting cases from Gloucestershire in which certain action was taken by the Ministry, because parish council control had not produced a good result. From my personal experience of parish councils in dealing with the footpaths survey, not very many would take a definite initiative in the matter or have sufficient initiative to deal with difficult questions. They need a representative on a management committee, but I do not see them acting efficiently as a management committee in their own right. I do not think they would any more than the rural district council would, where agricultural knowledge is not strong; under their powers rural district councils do not manage land except for an odd bit of open space. It is not part of the normal routine to give them control of an area which is agricultural as well as recreational, and it does not seem to be a very satisfactory way of securing agricultural interests. I think something *ad hoc* is wanted.

1489. *Mr. Arnold-Baker*: Are you not really tilting at a defect in the law, the fact, as you yourself said, that the legislation under which regulation schemes are made by district councils runs parallel with the agricultural interests and does not really meet them?—Yes, the interests that predominate inside a district council would not be competent to deal, for example, with the question Mr. Floyd has raised as to whether an acre or two should be put under corn.

1490. *Chairman*: On paragraph 41, what is a 'heaf'?—It is used very widely in the north country. It is land which by custom is allotted to the flock of this or that farm on the open common. It is not inclosed.

1491. You begin that paragraph by saying:

'The real trouble is not overstocking ...'

Is there a possibility there will be overstocking if 'common grants' are made for reclamation?—Yes. The commons may then be overstocked and must be stinted. The plague of hill farming is the milk cheque. It has put scores and scores of hill farms out of action as stock rearing farms.

1492. In the same paragraph there is a reference to Hunter's 'Open Spaces, etc.':

'The lord cannot claim to use for himself the land representing the difference between the gross amount of common as traditionally heafed and the net amount in use at any period by the commoners.'

I take it that means he is not entitled to inclose, but can he put either his own sheep on or let stints to other people outside?—He has no right to let stints or grazing other than that which by long custom he has a right to let.

1493. Even if as a result the pasture would be undergrazed?—In the Banstead Common case, tried in the Court of Appeal, it was definitely proved he could not limit the commoners' claims on the common to the average number of sheep which had been put there in the last so many years.

1494. If after all the commoners have exercised all their rights it is still possible to put more sheep on under modern methods of cultivation, is it not within the power of the lord of the manor to bring in other sheep?—No. It is not within his power although he may in some cases have a heaf on a common.

1495. *Mr. Arnold-Baker*: Does it not in fact depend on the custom of the manors?—The general principle is as I have stated and is not free to alteration by the lord of the manor.

1496. *Chairman*: I do not think we have had any cases where the lord of the manor has done this solely on his own initiative, but we certainly have had cases where he has done it in agreement with the commoners. Stints have been let to persons who have no rights.—We suggest in this memorandum that heafs or stints which are not used should be capable of being let by the committee of

management. The essential thing, however, is that if a commoner does not use his stint it should not be lost to his successor when he takes occupation of the land to which it is attached.

1497. *Mr. Evans*: Would you put any time limit to a loss of grazing right?—No. It is a rather complex matter of law, but the position of the original free tenant of the manor is fully set out in the books by Hunter and Shaw Lefevre. You have rights, attached not to yourself as occupier but to your land; they are rather like a restrictive covenant which runs with the land. They are however not a restrictive but a positive covenant. The rights to the common go with the land, not with the occupier, and are inextinguishable in the case of the original free tenants. Unless the free tenant's successors show they mean to abandon them (by selling away the farm land), the rights, provided this land itself still exists, continue. And as far as we can make out the Copyholders Act and the 1922 Law of Property Act made no change in that respect for copyholders.

1498. *Professor Alun Roberts*: Has there been any attempt to introduce dry hill and store cattle on to the heafs?—One of the great difficulties of the present cultivation of commons is that there are no cattle, although there is a perfect right to put them on. One of the few ways of keeping a common at present under control is to have more hill cattle. There does not seem to be any legal impediment to a commoner using other people's agisted cattle as part of the stock which he can put on the common. There is no objection to putting on agisted hill cattle from outside; the commoner is not limited to using his own stock on his heaf as the only constituent in using his stints. All he is limited by is the size of his own land and therefore the amount of stock (levant and couchant) which the land can carry, or the number of stints.

1499. But has there been something like an equivalent increase in horned stock on the common to make up for the decrease in sheep?—Not nearly enough. The subsidy for hill cattle has had extremely little effect in putting cattle on where sheep have a monopoly. I cannot speak very much for Wales, but in great masses of hill land in Cardiganshire you do not see anything but sheep.

Also the more inaccessible hill land is not suitable for milk cattle.

(*The proceedings were adjourned for a short time.*)

1500. *Chairman*: I think you would like to say something about village greens?—Very briefly, the Select Committee on Commons in 1913 recommended that where the title to a village green was not established the green should be vested in the parish council. It seems to be a very good suggestion, and I want to put it before you. There is great difficulty in establishing the title to a village green in many cases. I happen to be bandling one at the moment, and it is extraordinarily difficult to establish whether it is an open space in the vague sense, on which the local inhabitants have enjoyed recreation within living memory, or part of a common, and if so whether the commoners' rights have been kept sufficiently alive for it to be called a common. Since there are very many complications in this question of the village green, I do suggest that you try and make some recommendation about it, if only the one which I began by quoting.

1501. Are there cases in which the village green is alleged to be part of the highway?—Yes, there are cases where there is confusion or combination between the village green and roadside waste.

1502. *Mr. Arnold-Baker*: There are cases which have come up in my experience of county councils claiming village greens as part of the highway.—Yes the councils are then able to make a car park on them.

1503. *Chairman*: I think the only other question that is outstanding is afforestation. In the last sentence of paragraph 44, you use the word 'inclosure' putting it in quotation marks. Do you mean legal inclosure or simply fencing off?—Legal inclosure.

1504. The evidence of the Forestry Commission suggested that under their present arrangements apart from the fact that they normally have to close a new forest for some twenty or twenty-five years to get it established, they make every effort to meet the needs of public access. Is that your experience?—Broadly speaking, no. There are great difficulties in the matter. It took us in the Lake District eleven years to get what

were admitted by all the local inhabitants to be public rights of way admitted by the Forestry Commission through large new forests. The Commission's statement is too wide. With a view to protecting themselves from public rights of way and preventing their recognition on land which they are either acquiring or putting under 'dedication' orders with the owners' agreement, there are cases where they have asked the owner to object to a right of way shown on the draft foot-path map.

1505. I was not asking so much about rights of way as about ordinary public access where that has existed by right, or been customary. Is the Commission not now doing its best to meet all the needs of amenity in respect of access, and also in respect of attractiveness from the point of view of eye access, as I think it is sometimes called?—*Mr. Tysoe*: They are doing a great deal more than they did, but large scale afforestation still remains substantially a blot on the landscape. Open access on moorland tends to be replaced by a limited right of access, and I know the tendency has been, as in part of the New Forest, to replace forest glades by tarmacadam roads for the Commission's utilitarian purposes. They are by no means attractive.

1506. But is not the lack of attractiveness really only temporary? Once trees grow is not the forest quite an attractive thing to look at, unless it is so extraordinarily regular that it is a blot? Once it forms a canopy is it not attractive to look at?—In the case of Ennerdale, for example, that is one of the older plantations, where the trees are now mature, it is still a very solid block of geometrically planted trees. The newer plantations are tending to have a hardwood fringe and are not quite so objectionable.

1507. *Mr. Floyd*: Would you have felt that it would have been better if the Commission had not started a forest park in the south-west of Scotland or the border country of Northumberland?—*Mr. Stephenson*: I know the Border Forest country very well, and knew it before the Forestry Commission started their activities there. To me the bead of Kielder, Carter Bar and Upper Redesdale were then much more attractive than they are now with their heavy plantations.

1508. What do you think of their hostels, and the like?—We admit that the Commission are doing much in that

direction. I know they have provided hostels and camping sites, and so on. I give them full credit for that, but it still does not alter the fact that some of us think we have lost something with these vast expanses of trees, all uniform in colour, stretching across what was perhaps moorland with very delicate tints.

1509. *Chairman*: Do you object to natural regeneration as it is happening in many parts?—If you go up to Seathwaite in the Lake District, you will see 'scrub' woodland on one side which is, I suppose, weeds to the Forestry Commission, and similar trees on the other side of the valley on the lower slopes of Glaramara. To me at least that is far more beautiful than the rectangular plantations of conifers round Thirlmere or on the Whinlatter Pass.

1510. *Mr. Lubbock*: But do not those parts themselves need looking after, are they not deteriorating?—Yes. I merely pointed out the difference between these self-regenerated woods, and plantations.

1511. *Mr. Evans*: Are you considering only the amenity aspect for the moment, not the great national need for timber?—Yes.

1512. *Chairman*: I take it you do not object to temporary fencing in order to protect against fire and animals?—No.—*Mr. Symonds*: There is a point on temporary fencing which I want to make. The Forestry Commission plant naturally enough and quite rightly for timber and not for ornament. When they have fenced—what I say would apply to commons—they keep their fences well and maintain them strictly so that they are sheep-proof until the trees have reached a sufficient height, say, 6 ft., so that the top shoots and the top side shoots cannot be reached by sheep. They then become very much less careful to maintain their fences. As soon as the tree has reached 6 or 7 ft.—depending upon the climate and on the soil it may take 7, 10, 12 or 15 years—they let their fences down. The bottom branches by then have grown and joined into a cross-ways mat. If sheep get into those trees they are inextricable. Neither man nor dog can get in to get the sheep out. I can quote a case in Ennerdale Forest, where a ewe and her followers had gone for three years without ever getting out and then came out with no earmarks. If those sheep got scab in the meantime scab is then spread through the district. I

understand from the press, though I do not think what the newspaper says is evidence, the Forestry Commission apparently suggested if they took 500 acres out of 1,000 acres of common land they would only stop access on those 500 acres for twenty years. If the unplanted part of the 1,000 acres, taking that as an illustrative figure, had been open to sheep, there would be very great difficulties of the kind I have suggested in successfully using the 500 acres as sheepland when the other 500 acres were afforested. There are many other obscurities in the Forestry Commission's suggestion that the land should become a parish forest and be vested in the local authority. Under the Forestry Act land acquired by the Forestry Commission is acquired by the Minister of Agriculture and is vested in him.

1513. The intention was to have the law changed to make parish forests practicable.—I think so far as we are concerned, together with many other people in societies known to us, we would have very strong objection indeed to any wholesale planting for the purpose of timber production in the manner suggested by the Forestry Commission. Carried to its logical conclusion, it would mean that everywhere where a common was suitable they would plant half of it. They may not have meant that, but that is a plan to which there would be very strong public opposition both outside Parliament and inside.

1514. I think the suggestion was not that half of every common would be taken but of the 800,000 acres which they contemplated were suitable for afforestation, some 400,000 only would be used for the purpose over a long period.—Twenty years is quite a long period in anybody's lifetime as a walker. For twenty years one would be excluded from fifty per cent. of any area which came within those 800,000 acres and when admitted one would walk through footpaths or rides, and not have free access as now. It would be a definite detriment to hill sheep farming. There is no doubt about that.

1515. *Professor Alun Roberts*: Do I infer from your last statement that the forest would be impenetrable to animals or humans for twenty years from the time that they were first allowed access to it?—What I was aiming to suggest was that if sheep get into a plantation

when in six to ten years the fence goes down you cannot get them out. It is impenetrable to man or dog and a farmer and his dog cannot get in to get the sheep out. As I have said there have been cases where a ewe and her lambs have been inside for three years.

1516. But is not brashing part of the silvicultural practice of the Forestry Commission immediately that stage is reached, and would it not be a much shorter period that the forest is impenetrable?—In our experience they do not care much about brashing until they have begun thinning. Admittedly when a forest has grown up and they want the place to be productive they do brash, but often it is quite a light process.—*Mr. Tysoe*: I think it varies from region to region. I believe in Scotland they do not brash.

1517. *Mr. Floyd*: Quite apart from brashing once the plantation is established the shade becomes so dense that it kills out the underbranches.—*Mr. Symonds*: I agree, they do die back.

There is a period, the first few years, when sheep are dangerous to the trees, but that is usually a period when the plantation is fenced off. I repeat however that the Forestry Commission's suggestion of planting 400,000 acres of common land is a most radical one. It means changing the ownership and abolishing common rights, because it cannot be done without abolishing common rights.

1518. *Chairman*: But in many cases the common rights have in fact not been exercised for very long periods and on some of the southern commons there are consequently forests growing now.—Yes, from seedling firs on the sandier soils and so on, but that does not apply in the northern counties.

1519. Thank you very much. We are most grateful to you for this long memorandum and the long examination which has followed on it.—*Mr. Tysoe*: We are very grateful for so hospitable a hearing.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

10

Thursday, 31st May, 1956

WITNESS

Youth Hostels Association (England and Wales)



LONDON

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List of Witnesses

THURSDAY, 31st MAY, 1956

MR. H. E. C. GATLIF

*Member of the National Executive and
Countryside Committees*

MR. M. J. CAMPBELL

*Chairman of the London Region
Countryside Committee*

MR. R. M. STUTTARD

*Advisory Officer at the Youth Hostels
Association Headquarters*

*On behalf of the Youth Hostels Association
(England and Wales)*

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 31st May, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MR. IVOR MORRIS, J.P.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence submitted by the Youth Hostels Association (England and Wales)

Chief purpose of this evidence

1. Our evidence is chiefly directed to stating the case for amenity and public access, considered as part of the general public interest, whilst recognising the importance of other factors (for example, agriculture) in that interest. We accordingly also discuss some of these factors in an attempt to assess their different degrees of compatibility with what is necessarily our principal concern.

2. We think it important to recognise, at the outset, that the best use of our restricted acres may well, in many cases, be a multiple use, and that a pre-requisite for its achievement is a spirit of tolerance among all the parties concerned.

The Youth Hostels Association as part of the organised open air movement—a new factor in the countryside

(a) *Its origin in new needs and new opportunities*

3. The Y.H.A. is an association young in years and contemporary in spirit. Founded in 1930, its objects are

'to help all, especially young people of limited means, to a greater knowledge, love, and care of the countryside, particularly by providing hostels or other simple accommodation for them in their travels, and thus to promote their health, rest, and education.'

4. Its rapid growth, in common with other well known youth organisations, demonstrates the strength of the need which it seeks to fulfil, and it may be thought of as one response to the challenge of an increasing urbanisation—a not unexpected reaction, by no means confined to this country. In one aspect it is part of the call to adventure, touching what we believe to be a deep need in human nature, wholly salutary for the individual and potentially of great value to the nation. It is also, perhaps subconsciously, part of the attempt to live a full and rounded life by an extension of the field of activity beyond the, in some senses (and notably in the physical and aesthetic senses), cramping conditions of life in towns and cities.

5. That extended field of activity is the countryside, and we cannot too strongly stress its importance for the open air movement as a whole, and consequently our keen interest in matters affecting its future.

(b) *The open air movement's debt to the Commons Preservation Society*

6. We acknowledge our debt to the founders of the Commons Preservation Society in bringing into existence an organised public opinion in defence of commons. It was to their efforts that the practical cessation of the inclosure movement in the latter part of the 19th century was largely due. Their legal knowledge and sense of justice served to revive and protect the ancient rights of commoners; their concern for the conditions of life in rapidly growing built up areas, and their foresight in relation to new needs, made them pioneers in what, without metaphor, can be called the battle for open spaces and for public access thereto. They held the ground when the new populations had yet to benefit from universal education, increased leisure, and the development of new means of transport, and when consequently the armies of liberation among the townsfolk were still untrained or not yet mobilised.

7. Concerning the effect of the work of the Society (founded in 1865), Trevelyan ('English Social History', page 537) states:

'The movement for the enclosure of common land—for so many centuries past a source of dispute and grievances, as well as a means of greatly increasing the productivity of the island—was halted at last in the decade between 1865 and 1875. It was characteristic of the altered balance of society that enclosure of commons was ultimately stopped by the protest not of the rural peasantry, but of the urban population, who objected to exclusion from its holiday playgrounds and rural breathing spaces. The Commons Preservation Society effectively opposed the destruction of the remaining commons, in the interest, nominally and legally, of the vanishing 'commoner' of the village, but really of the general public in quest of 'air and exercise'. The great battle of Berkhamsted Common (1866) and the saving of Epping Forest ushered in the new age. Enclosure had done its work in England and was to do no more.' (Note 1.)

The access question

8. We discuss below, first, the general importance of commons as open spaces (paras. 10-15) before commenting on two points of special interest, viz.—

- (i) the interpretation of 'neighbourhood' in the phrase 'to promote the benefit of the neighbourhood' in the Commons Act, 1876 (paras. 16-19);
- (ii) the question as to whether provision for open spaces in current planning legislation renders unnecessary separate provision for it in any revision of legislation appertaining to commons (paras. 20-27).

9. We then state in broad terms our view of the case for public access (paras. 28-41) and reply to certain objections which receive prominence from time to time (paras. 42-50).

(a) *Comparison between the importance of commons as open spaces in 1865 and 1956*

10. The protective action begun in 1865 came only just in time, if, in many cases, it was not already too late. The saving, for example, of Epping Forest, and the removal of the encroachments upon it, has greatly benefited succeeding generations of Londoners; and the protection accorded to the remaining commons throughout the country has, among other advantages, helped to preserve a valuable and none too large reservoir of open space in an era when development on freehold land has been intensive.

11. What was true in 1865 holds equally in 1956, and in the meantime the supporting evidence has become cumulatively stronger. If it was then right, as we

Note 1.—Dr. Trevelyan's interest in the open air movement is well known. We feel it peculiarly fitting that he should have been the first President of the Y.H.A. and that he remained so for twenty years.

believe is now generally agreed, to bring to an end the long continued process of inclosure it could only be wrong to set it in motion again today.

12. It was claimed for the commons within fifteen miles of Charing Cross saved from extinction in the 19th century that they were 'none too large for the health and enjoyment of the ever growing population'. (Note 1.) But of the 20 million population of England and Wales (1851 census) fewer than 50 per cent. were urban; whereas today's population of about 44 million is over 80 per cent. urban and has, in addition, acquired habits of travel impossible for the earlier generation.

13. It follows that in considering commons anywhere in the country today the open space needs of the population as a whole must be taken into account.

14. We do not suggest that the great inclosure movements (as distinct from the manner in which they were carried out) were not justified and that they did not play an essential part in the nation's rise to greatness. But no comparable result could be looked for today. Past success was based on a thorough absorption of almost the whole of the good land and, in the hilly districts, much of what was then and still remains marginal. The residue of common land, from the point of view of agriculture and forestry, must therefore be limited both in extent and in suitability (see further, para. 60). In contrast, from the point of view of use for 'air and exercise' (the accepted phrase, but an inadequate description of what people really seek), the commons have all the attractions and rich associations connoted by heath and moorland, upland and village green.

15. Alienation of common land is an irreversible process. So also, to all intents and purposes, is development. It is therefore important to look beyond current needs. No one can foretell the future, but certain trends have been clear and long continued. We think it likely that, among generations subjected in progressively greater degree to the softening processes of civilization, there will be many to hold in enhanced regard the almost fortuitous survival of commons as open spaces retaining as a rarity something of the wildness, unkemptness and variety of nature.

(b) *The interpretation of 'neighbourhood' in the Commons Act, 1876*

16. Access under the Act might be allowed for the benefit of the neighbourhood only; general access was not envisaged.

17. It is necessary to understand this in the setting of its own time. The parish was still the social unit, and with some justification it could be maintained that to provide recreation and access facilities for the 'neighbourhood' was to provide for all who could or would wish to use them.

18. Today the situation is so widely different that it is unnecessary to labour the point.

19. We therefore consider that amendment of the law to give legal sanction to the presence of the general public upon any rural common would be a realistic and reasonable reform (see para. 64).

(c) *Is current planning legislation sufficient?*

20. There is need to consider whether provision for open spaces in current planning legislation is sufficient and renders unnecessary separate provision for it in any revision of legislation concerning commons.

21. On the one hand stands the fact that the existence of commons, and the practice and body of legislation now in being to protect them, have saved as open space much land which would otherwise have been sunk without trace under brick and concrete.

22. Further, whilst some may dislike the rigidity, seeing in it the dead hand of an ancient system, it is far from accurate (as the Commissioners will already know) to consider it as dead. It is not even frozen, as has been suggested at an earlier hearing. Neither the Defence Services, nor the Minister of Agriculture, nor statutory water undertakings, have found it impossible to start new enterprises on common land on a considerable scale, when the public interest required it. If others

Note 1.—*Shaw-Lefevre (Lord Eversley): 'English Commons and Forests', 1894.*

find more difficulty, this must be because, as was also said, public opinion was against them on the case in point.

23. On the other hand there exist in planning legislation important loopholes which may, in the long term, do much to restrict the areas for which provision for access can or has been made under that legislation.

24. We draw attention to Part V of the National Parks and Access to the Countryside Act, 1949, particularly Section 60 (5). It will be seen that its effect is that land, or any part of land, scheduled by a planning authority as open country ('predominantly mountain, moor, heath, down, cliff, or foreshore'), and concerning which an access agreement or order has been made, may at any subsequent time be withdrawn into the category of 'excepted land' meaning that the public's right of access is suspended or lapses permanently. This provision can be applied to land in National Parks in the same way as to land elsewhere.

25. The uncertainty is increased by 'planning' being a comparative newcomer to the field. Its considerable achievements are not in doubt, but it is also evident that (under stress of conflicting demands) its concepts have sometimes given way to expediency. If London's Green Belt had been mostly common land, the difficulty of alienating it might have led to a gain in time and have provided a real inducement to the serious formulation of alternatives. We might have been spared the inroads made upon it, and the continuing uncertainty as to its becoming a definitive reality.

26. The diminished protection afforded to the amenity and access interest by access provisions based on planning legislation, as opposed to that afforded by either a customary or legal right of access to a common, is illustrated in the current proposal to inclose the remaining 23,000 acres of Hexhamshire and Allendale Commons in Northumberland. In this case a number of safeguards on access have been introduced, but it is perhaps unfortunate that the case has arisen at this time, and it may be that the proper course is to suspend action pending the findings of the Royal Commission.

27. In our view, the status of land as a common offers a better safeguard for its continuing availability for public access (legal or customary) than is secured by planning legislation, and we would hope to see it retained.

(d) The justification for facilitating public access

28. It is important to consider access in more warmly human terms than those of legal abstractions.

29. It serves, we think, three major ends, which are to be seen in its contribution first to individual health and happiness; second, to national well being and prestige; third, to understanding between town and country.

30. The existence of a strong open air movement in the new conditions of greatly increased leisure must be regarded as a permanent and wholesome feature. Its contribution to health and happiness, to physical fitness, high morale and a courageous attitude to life, cannot be measured, but its value must be apparent to any careful observer. That this is appreciated in responsible quarters is shown by the interest and support, among others, of King George's Jubilee Trust, the King George the Sixth Memorial Foundation, and the Carnegie Trust, and by the importance attached to the challenge of the open air in the recently announced conditions of the Duke of Edinburgh's Award.

31. Yet we doubt whether sufficient attention has been given either in Parliament or in the country to the conditions and essential freedoms required by the movement for its exercise. The battle for access has been and continues to be a hard and uphill fight. Opposition is based on traditional conservatism and isolationism, rather than on a reasonable assessment of the merits of the case. Yet those who maintain it are no doubt as content as the rest of the nation to enjoy the reflected glories of their countrymen's achievements in the Himalayas or the Polar Regions.

32. Such achievements would lose much of their significance for national prestige if they were not symbolic of the existence at home of a broad based pyramid of open air activity and a tradition of adventurousness widespread among the public.

It is even questionable whether they would be possible. (Note 1.) There is an analogy in the case of cricket, where the redoubtable prestige of certain county teams is often ascribed to the flourishing of innumerable humbler teams on innumerable grounds and village greens throughout their territories.

33. Today there exists a rich literature to show what the chance to travel and explore, and make one's own discoveries (and mostly they begin at home) has meant to our people in the last hundred years. We draw on it only to quote Mr. Geoffrey Winthrop Young:

'the principles governing all such adventure, and directing the process of preparing for it, are the same, whether we are setting out as experienced travellers with our hoarded pounds for Turkestan, or tramping as boys, upon our hoarded shillings, into the—to us—equally unknown and wonderful hill spaces of Wales or Cumberland or Scotland.'

And, concerning the 'new training for fitness of body and spirit which our own hills, no less than distant ranges, will be offering to oncoming generations' he writes:

'only a contact with realities, realities of endurance, of uncertainty and of service, can train character . . . There is no such reality in the competition of games or examinations. It can be found only in contests of uncertain issue, and progressive severity, with opposing natural forces . . . ' (Note 2.)

34. We hope it is not superfluous to add that such training and self expression is by no means confined to the hills; even less is it confined to special environments such as the rock faces frequented by climbers. Between such specialised endeavours and the romps of children on suburban heaths, our commons afford scope for a diversity of recreative activities, regarding which we possibly speak for a wider sector of the public than is represented by our membership.

35. In evidence already given to the Commission on behalf of the Ministry of Housing and Local Government, Dame Evelyn Sharp stressed the importance attached by the Ministry to the needs of public access, and stated that they would be 'alarmed' at any proposition that common land *used by the public* should be at all easy to alienate.

36. But what constitutes usage by the public? Our membership has always included an important minority (reflecting a minority in society at large) who find refreshment of body and spirit not on the beaten track or in districts whose fame brings numbers of their fellows as visitors, but in remoteness and solitude. Popular opinion may find the preference difficult to account for, but it is none the less valid for the individuals concerned, and it is not difficult in our youth hostels to observe that these solitaries (or maybe these few close companions) are often gifted persons outstanding among their fellows.

37. We mention this to make the point that the need to provide for public access is not fully met if considered only in terms of the tastes of the majority judged either by present usage or an assessment of possible future usage. The common on which, according to local opinion, 'no one ever goes', may on that account already be cherished by some. It also follows that the proximity of a common to a large population is no final measure of its value for public access (though it may have a bearing on the need for byelaws, and on the possible extent of any problems of abuse which might arise).

38. This introduces the question of behaviour in the countryside, which in turn affects relations between town and country. We discuss it in the next section, under 'Objections to access'.

39. Here it need only be said that the development of close and sympathetic understanding between town and country ought to be a national objective. If knowledge of each other's outlook and conditions of life and work became more

Note 1.—'We all know that cream only forms on top of milk'; the Duke of Edinburgh in a television broadcast in celebration of the 21st Birthday of the Central Council of Physical Recreation, 30th April, 1956.

Note 2.—Foreword to Eric Shipton's 'Upon that Mountain, 1943'.

widespread, certain problems would be ameliorated. Already, there is more co-operation and goodwill on both sides than is, perhaps, generally realised. (*Note 1.*)

40. Opportunities for contact and personal observation hold the key; and the need to foster them, which is an important part of our aims, sufficiently explains why we regard this as part of the case for public access.

41. A further step would be to work together, sharing responsibility in specific tasks. A subsidiary, but important advantage of the schemes of management which the Commons Preservation Society propose should be introduced for each common, and which we support, would be the opportunity they would provide for just such co-operation; and we would hope that suitable representatives to serve the amenity interests would on occasion be found among our members.

(c) *Objections to access*

(i) *Conduct*

42. Bad or inconsiderate conduct on the part of visitors is the reason most frequently put forward by landowners and tenant farmers. There is unfortunately a small minority (except in the case of the litter question where it may be a majority of the nation) who are offenders. We make no attempt to excuse them, and would not swear that some of our own members were never among them. Obviously it is not exclusively a problem of the countryside, but bad cases in the country may be particularly damaging.

43. Attempts to restrict access are not, however, a solution; they may, by acting as a challenge, aggravate the situation.

44. On the contrary, the granting of access (as under Section 193 of the Law of Property Act, 1925) has advantages for the owner of the common, in that it enables byelaws and conditions to be applied, e.g. it becomes an offence to camp, light fires, or drive vehicles on it without authority.

45. There is also need to propagate widely the Country Code issued by the National Parks Commission. We do so among our members and, indeed, had our own version before an official Code was issued.

(ii) *A Warden Service—a possible solution*

46. On some commons frequently visited by the public it might be appropriate to establish a warden service. We draw attention to the successful operation of such a service, largely by volunteers, on the important new areas opened to public access on Kinder Scout in the Peak District National Park. (*Note 2.*) But it would be undesirable that wardening of commons, with its suggestion of surveillance, should become the general practice. In this, as in much else, each common should be considered individually.

(iii) *Water gathering grounds: alleged danger of pollution*

47. Further acquisition of common land by water authorities appears likely to be sought increasingly, particularly in view of heavy new demands for industrial consumption.

48. There is welcome evidence that, since the publication by the Ministry of Health of the Report of the Gathering Grounds Sub-Committee (1948) some water authorities have changed their policy and withdrawn their opposition to public access to their catchment areas. Others remain hesitant, and the alleged danger is still cited at public inquiries. But 'it seems common sense that what is safe and reasonable in one case should be safe and reasonable in another, unless there is

Note 1.—We have benefited from the co-operation of, among others, the National Parks Commission, the Forestry Commission, the Association of Agriculture, the National Farmers' Union, and the Field Studies Council in the running of countryside discovery courses for our members, and in other ways helping them to see for themselves.

Note 2.—'A National Park Warden Service', John Foster, Planning Officer, Peak Park Planning Board, in *Town and Country Planning*, May, 1956 (pages 258ff).

some marked deficiency in the defences against pollution which in any event is an extremely remote contingency.' (Note 1.)

(iv) *Grouse moors*

49. The Dower Report (Note 2) claimed that 'the available evidence all goes to show that the use of the moors by ramblers does not cause any material harm except on shooting days, and will not do so under the fullest freedom of access, unless they come in enormous numbers or are possessed by some unprecedented egg-destroying mania. For example, Ilkley Moor, as a common in an urban district, is by law open to the public for air and exercise, and has, in fact, for many years been much frequented by hundreds—at public holidays by thousands—of walkers, yet it has continued to rank high among the smaller grouse moors and to produce, year by year, consistently good bags.'

50. The solution proposed in the Report, viz. that full access be given throughout the year, except on a limited number of actual shooting days, has been followed on Kinder Scout (where the moors are now closed to the public only on 12th August and on each Monday thereafter during August and September), and we would hope that the Commission would favour a comparable solution in other cases where sporting rights are exercised on commons.

Use of commons for agriculture and forestry

51. We make no claim to be judges of the economic and technical aspects of these questions. But as observers enjoying exceptional facilities for seeing the countryside, we comment on some points of general concern to the public.

52. We wish to see a prosperous rural scene making a full contribution to the nation's welfare.

53. *Grazing use.* The nature of the soil and, in many cases, the steep slopes of the land, will strongly indicate continuance of the traditional use of commons for pasture, and this is better fitted than most uses to be complementary to their value for public access.

54. *Arable use.* Where, through neglect, a common has reverted to scrub, and ploughing up would assist its rehabilitation, such temporary ploughing should, with the Minister's consent, be permitted. Provision should be made safeguarding commoners' rights of grazing and public rights of access. Possibly a scheme under which different parts of a common were successively held as arable would be suitable.

55. But as to *permanent* conversion to arable we must express greater reserve. The Minister's sanction should only be given where, after public inquiry, it is found that commoners' rights cannot be exercised, and that the land has not and is not likely in future to have any value for public access.

56. If a fair yield is only to be expected for a season or two, ploughing up should not be resorted to. In such cases the common may have greater value as a wilderness, and as a reserve for some of the common plants now less frequently seen, due to the extended use of weed-killing sprays to control hedgerow and wayside growth. This is not a problem for the Nature Conservancy, whose chief concern will remain the preservation of rare species and habitats, often incompatible with general access for public enjoyment.

57. *Fencing.* While we agree that it would be reasonable to allow some fencing under a scheme, on the lines suggested by the Commons Preservation Society, it should be made clear that no process of legal inclosure is involved. Adequate provision should be made for gates and stiles, and in all cases notices stating that the land is common, and open (subject to byelaws) for public access, should be displayed at points of entry and at the boundaries between common land and land in private freehold. There is, however, a great attractiveness and restfulness for

Note 1.—Public Inquiry relating to an Access Order, Boulsworth Hill (near Colne), Lancashire, 20th March, 1956; evidence submitted by the Council for the Preservation of Rural England (Lancashire Branch). It is of interest that though the water authority advanced a fear of pollution by ramblers, no steps had been taken to deal with a colony of gulls based on their reservoir. On the Inspector's tour of the area, they were found feeding on a refuse dump in the vicinity.

Note 2.—Report on National Parks in England and Wales, John Dower, 1945 (Cmd. 6628).

the eye in an extensive tract of unfenced land. It is an important factor in the idea of freedom for which commons stand in the mind of the public. We hope that fencing will not be resorted to as a matter of course, and that where it is found to be necessary the possibility of using it only temporarily will always be considered.

58. *Small scale planting of trees.* This, in addition to its commercial value, will often enhance the beauty of a common, provided it is carried out having regard to the nature and extent of the common, and its use by the public and by commoners. Where soil conditions are favourable, broad leaved trees would generally be preferable to conifers.

59. *Afforestation.* The Forestry Commission's need of land justifies commons being considered, along with other land, as possible contributors to a solution. We should, however, be entirely opposed to the view that all plantable common land should be afforested. It is true that the policy of the Forestry Commission is to facilitate public access where possible, as in the National Forest Parks. But what we might call 'access of the eye' is also of importance, and this is to a large extent lost under a forest cover. We consider it very desirable that a good deal of wild moorland and upland should be allowed to remain as open country, not only near towns but also in remote areas.

60. *Note on the area of commons available for agriculture and forestry.* There may be some danger of over-optimism as to the increased productivity to be expected even from an intensive development of common land, if that were possible. Two million acres (3,100 square miles) is the largest estimate of its total, and this represents only 5 per cent. of the area of England and Wales. A great proportion is in the highland zone of the north and west and consists of elevated land of poor soils exposed to unfavourable climatic conditions. The historical process of inclosure operated invariably to absorb the best uninclosed land remaining, so that a common typically today is, almost by definition, the naturally poorest land in the neighbourhood. None the less the greater part of commons in the high lying zone is put to good use as rough grazing—its value as open space being additional to this. On balance, it would appear that greater scope exists for the economic extension of farming and forestry on the overwhelming bulk of land in private freehold or public ownership rather than on the 5 per cent. residue of the old common lands.

The Defence Services

61. Where the Defence Acts have been used to acquire a common and to extinguish compulsorily commoners' rights and the Service subsequently no longer requires the land, it should be a condition of its disposal that it be opened to public access.

Recommendations

62. In summary, we would not favour any general relaxation of the safeguards whereby the status of commons is maintained. We agree that on a number of commons there is a case for a better organized use of the land, particularly for grazing by the important hill flocks and for stock raising. The need everywhere is to provide an efficient system of management to replace the defunct manorial system, and to make fuller recognition of the needs of access.

63. *Confirmation of status.* The existing situation under which no common land is to be inclosed without the consent of the Minister of Agriculture, should be re-affirmed, with the addition that in all cases of proposed inclosure or major change of use there should be an opportunity for the commoners and the public to be heard.

64. *Public rights of access.* The public's legal right of access, already enjoyed on all urban commons under the Law of Property Act, 1925, and on certain other commons, should be extended to all commons, thus recognising in law what has long been sanctioned by custom.

65. *Schemes of management. Responsibility of Minister of Agriculture.* Under both of these heads we are in general agreement with the recommendations made by the Commons Preservation Society, and the Ramblers' Association.

66. The suggested body of conservators to be established for each common, should ensure that the needs of each are considered separately. It is important that they should be representative of all interests: the owner, the commoners, the amenity bodies, and other public interests. They should be appointed by the Minister.

67. In respect of commons in National Parks and areas of outstanding natural beauty (designated under the National Parks and Access to the Countryside Act, 1949) the Minister should consult with the National Parks Commission before approving a scheme, and the National Parks Commission should have power at any time to make proposals concerning such commons.

Appendix

SOME FACTS ABOUT THE YOUTH HOSTELS ASSOCIATION

The Y.H.A. is a voluntary association with some three hundred youth hostels in England and Wales, providing simple accommodation in a wide diversity of buildings, including manor houses, water mills, shooting lodges, shepherds' huts, nissen huts, and a Norman Castle. Membership is open to all who are prepared to abide by a few simple rules, notably that they travel either afoot or by cycle, by canoe or on horseback. Most members are under twenty-one, but there is no upper age limit. Special encouragement is given to school parties. The Y.H.A. has nineteen regional groups, each responsible for the management of hostels in its area, and is to a large extent dependent on voluntary workers for its administration. Affiliated associations provide similar services in Scotland, Northern Ireland, and Eire and in some twenty-five countries in Europe, the Commonwealth and elsewhere. Membership of one association entitles the holder to use youth hostels in all the other countries.

There is close co-operation with many other bodies concerned with education, youth activities, the provision of holidays, countryside activities, preservation and amenity.

Youth Hostels Association (England and Wales)

		<i>Members</i>	<i>Hostels</i>	<i>Beds</i>	<i>Usage</i>
1931	...	6,439	73	1,562	—
1935	...	48,057	239	6,398	307,811
1940	...	50,864	236	8,267	275,600
1945	...	153,751	234	9,595	746,699
1950	...	210,142	303	13,971	1,157,802
1955	...	186,796	286	13,912	1,041,823

<i>Provision for Wardens</i>	...	...	...	See para.	46
<i>Access to water gathering grounds</i>	...	...	...	"	47-48
<i>Access to grouse moors</i>	...	...	...	"	49-50
<i>Encouragement of grazing</i>	...	...	...	"	53
<i>Arable use</i>	...	...	...	"	54-56
<i>Fencing</i>	...	...	...	"	57
<i>Tree planting</i>	...	...	...	"	58
<i>Afforestation</i>	...	...	...	"	59
<i>Defence Services</i>	...	...	...	"	61

Examination of Witnesses

MR. H. E. C. GATLIFF, MR. M. J. CAMPBELL and MR. R. M. STUTTARD,
on behalf of the Youth Hostels Association (England and Wales)

called and examined.

1520. *Chairman:* May I say how grateful we are to the Youth Hostels Association for their memorandum. It occurs to me as a result of reading it that it gives a general impression that all commons are open spaces. Are not

a great many commons in fact woodlands?—*Mr. Gatliff:* Yes, one would not dogmatise on that at all. One of the difficulties of the whole of this issue is how little any individual or body knows of the exact distribution or use of the

one and a half million acres of common land.

1521. You also say in paragraph 21:—

'... that the existence of commons, and the practice and body of legislation now in being to protect them, have saved as open space much land which would otherwise have been sunk without trace under brick and concrete.'

Certainly it is not sunk under brick and concrete, but is it not sunk under trees in many cases, and is not the proportion growing, owing to the growth of the forests on commons in the south of England?—Yes, I think that sentence is more relevant to the metropolitan and semi-urban type of common. I wonder whether it might be a help if I supplemented our memorandum with a very short summary of our position as I see it? We had hoped that our national treasurer, not in that capacity, but because he is our second in command, would have been here today, but he and the chairman of our National Countryside Committee are both people who cannot easily get a day off from work, so I was asked to lead instead. I do not hold any office, but I am on the National Executive Committee and also on its Countryside Committee which deals with the detail of problems of this kind. Mr. Campbell is the Chairman of the Countryside Committee of our London Region, that is south eastern England. He knows about the particular circumstances of the south eastern commons, and our contacts in that part of the country with forestry and farming interests. Mr. Stutterd is the officer on our national whole-time staff who deals with countryside matters and was responsible for the detailed drafting of our memorandum. He is also very much in touch with the educational side of the Y.H.A. and can tell you about that. We are all much in the day to day life of the Y.H.A. and on the look out for what the average member feels and thinks about these things.

The points about access we would specially like to stress are that there is access of the eye as well as of the foot, and access not just in one dimension along paths but in two, a freedom to fling one's arms out and roam where one wants, and that not merely on the hill tops, but also very much on the hill slopes and the moors. This does not of course apply to all the bogs and thickets

that are to be found in the depths of some commons; we know perfectly well that there are some places which are unattractive and impenetrable. We would also like to stress very much the beauty of some wild land—wild things such as bracken, gorse and birch scrub. In their way—and I have said this elsewhere to people holding strong views on the misuse of commons—these have just the same sort of value as the flower beds in St. James's Park which nobody is going to suggest should be used to economic advantage. Another point perhaps not quite enough brought out in our memorandum is that the access of the eye and the freedom of the wild place mean a good deal to the cyclist as well as to the walker. Half our members probably are cyclists, less than half in the north, but more in the south, at any rate among those who go to Devon and Cornwall. We are of course not motorists, but the same consideration arises for those who motor through some of these wild places. It is a very great joy after going through much cultivated country to have a stretch of Dartmoor or Bodmin Moor even if we are not going to walk on it very much. Another point of much importance to the Y.H.A. is that there should be remote wild places not a great deal visited. I was on the top of Great Gable at Whitsun and there were twenty-seven people there. My experience of the remote areas is perhaps rather more in Scotland where the question of commons does not arise except I think in the Outer Hebrides, but the aesthetic values are of the same type. When I went through Glen Affric on a similar Whitsunday I was alone for thirty-six hours. There is value in keeping places where there is that kind of remoteness. One thinks of particular cases. I think of the man who got off his bicycle and walked down with me to a hostel in the Central Highlands. I lent him my maps and he went on to Glen Farrar, and he walked alone over a number of mountains that are hardly ever visited. He is now a mathematics senior research student, obviously a rising young leader. I think of the Geordie lad who came in late alone over the hill to the Glen Affric hostel. I remember that later he told me he had walked thirty miles alone one weekend on the Cheviots. He is now an Air Force rescue worker and has made a career of it. Those are the sort of people for whom the remote places are worth something. On the other hand the Y.H.A. have also a great sense of the

living countryside, a love of the country in good heart, a joy in good woodland. We are much in touch with the Forestry Commission. We have owed a lot to them in many cases. We are very conscious that they produce a much less monotonous result than they did, and have done a good deal in places for access. It is not always all that one could wish, but we owe them that tribute, and many of our people are very interested in their work. I think our people also have a great sense of the value of good pasture and good grazing. It is a great joy to them to see good grassland rather than mere scrub. One story perhaps I might tell is about a row on the South Downs over some fences which the farmer said he must have if he was to keep the land well grazed and so stop the thorn scrub spreading. One of our people, a tough young man who had been accustomed to bait keepers on Kinder was asked to go down and have a look at the place and say whether he minded the fences. On his return he said 'I do not mind the fences in the least, they are no impediment, but I got stuck in the thorn scrub and it took me half an hour to get out'. I would like to add on that point that the Y.H.A. are not too happy that the Ministry of Agriculture is as successful as it would like in getting a lot of private land well farmed. What it comes to I think is that we do try to take a balanced view of these things, but we do not want to see a major sacrifice of those values of landscape and remoteness that in practice many of the commons in various ways in different parts of the country have given us. On the whole I think the younger generation seem to care less for principles in matters like this than perhaps mine did but I think probably they care just as much, perhaps more, for the practice, and perhaps their care for the practice means that in the end they serve those values more effectively. I think that is the spirit in which we try to approach these problems.

1522. When I read your memorandum I felt that love of the wide open space was a very recent development, and possibly only a temporary one. If you go through English literature you find that it is not the wide open space which is so attractive that creates emotion so much as England's green and pleasant land. England's green and pleasant land, it seems to me, was not formed from scruffy commons, but from really efficient agricultural cultivation in the course

of the 18th and 19th century, and it is only in the late 19th century owing to the repeal of the Corn Laws that the tendency to regard the wild part of the country as the most interesting developed. Do you find among your members that there is a change of attitude to these things, that we are getting back to the emotional approach of the early 19th century poets?—My own guess of the views of the younger generation is that they have a much more lively sense of England's green and pleasant land perhaps than many of those of the generation before, but that the love of the wild as well is also very strong. I would say these two things are very much balanced, and one would hope that they would remain balanced, largely because the love of the wild arises from the comparatively sophisticated conditions in which inevitably in a highly populated country people must live.

1523. *Professor Stamp*: I think the Y.H.A. is probably in a position to help us by giving us some very useful factual evidence. Have you a map showing the position of youth hostels, and a list of them, with the relative attendances at each, because we might thereby get some idea from the actual nights on which beds are occupied where the young people go and what really attracts them? I have in mind, for example, your Y.H.A. centre at Canterbury which I know used to be difficult to get accommodation at. It is in good farming country with the attraction of the archaeology of the area. I would so much like to see before this Commission positive evidence of that sort, and if you could supply it I think it would be very helpful. It would give us a very useful guide to how far the existing common land acts as a magnet and how far other types attract.—*Mr. Stutland*: We could certainly supply that.—*Mr. Gatliff*: We have a map showing the location of all our hostels, and I think a list showing the use made of every hostel in the country.

1524. *Mr. Arnold-Baker*: I believe there are consolidated figures in the back of your memorandum?—Yes. One has to bear in mind the distribution between coast, mountain country and historic cities, and also between holiday and weekend. Round the big towns there is a lot of weekend use. On the other hand when you get into Cornwall the use is almost entirely holiday. In the mountain areas it is in between.

1525. *Chairman*: I suppose you could not indicate in any way the day tripper, the man who goes out walking for the day from the big industrial centres?—No. Of course some of our own people at times go out merely for the day, but we have little information. The Ramblers' Association probably have a good deal more on that sort of issue.

1526. You probably heard this morning the discussion of the theory that the commons are always the marginal lands. You make a point on it in your paragraph 14. Would you agree that some of the common lands are in fact good agricultural land?—I think I might say the Y.H.A. is always particularly careful to avoid saying or thinking that anything is one hundred per cent. the case in any of these issues. We know that things vary immensely, and whenever we are on a practical case we insist on getting down to its details. Sometimes the result comes out differently from what we expected.

1527. Also there is a reference in paragraph 16 which I think may be misleading because it is trying to put something rather shortly. There is no right of access under the 1876 Act is there? It is merely that, when regulation or other action is taken under the 1876 Act, the benefit of the neighbourhood must be taken into consideration. Is that what you mean?—Yes.

1528. *Professor Stamp*: In paragraph 15 you say that alienation of common land is an irreversible process, but would you agree from your point of view that the creation of National Parks is in a sense the reverse process, in giving greater facilities to your members to enjoy the country in those selected areas than they had before?—Yes, it is. We accept that on the National Parks side, thanks not least to Mr. Symonds, we have in many ways made great gains. We have no National Parks for the south-east of England, and we are sometimes conscious that if attention is concentrated upon National Parks other areas are perhaps not quite so well attended to in the things that we care for.

1529. In that connection, has the creation of National Parks up to the present time had a direct effect on the youth hostels? Are the National Parks acting as a magnet to your members?—The interpretation of Y.H.A. trends is quite extraordinarily difficult, but I

would not think that there has been any marked indication of a shift between the different kinds of use. One thing points one way, and another another way and use by foreigners increases the use of a quite different kind of hostel, the historic city hostel. It is extremely difficult to identify particular trends. They are mostly very moderate in relation to the more 'general tourist' kind of trends.—*Mr. Stuttard*: It is in any case rather early to be able to speak of some of the less known parks. The Lake District or the Peak District were already very popular rambling areas with many hostels situated in them. But the National Parks Act has only been operating six years, and, at the other extreme, the Pembrokeshire coast has been very inadequately served by hostels and very few people are yet aware of there being a National Park there. We have however already begun to benefit from its existence because the Parks Committee recently helped us to get a further hostel on that coast. It is possible in the next decade or so that we might get a string of hostels along it and use might follow.

1530. When National Parks were being discussed, it was urged by some that once we demarcated a National Park it would be such a magnet that all available accommodation would be completely inadequate, and that the only hope would be to create a number of hostels either under your control or otherwise in each park as soon as it was created. Have you not experienced that rush?—No. I do not think we have. In Pembrokeshire, to take the same example, it could not be expected. There is little accommodation and even the hostels we have are not very often full. They are far apart for walkers, and the whole area is too far away for most people to get there except in July and August.

1531. How many would your hostels hold?—They vary enormously, but in that part we would say perhaps 25 to 30 beds in each hostel. Hodgkisson Hill near Tenby is rather larger, holding 44.

1532. *Chairman*: Is there any explanation of the fall in your numbers between 1950 and 1955? Was that purely fortuitous, due to the weather, or something like that?—Immediately after the war all holiday organisations experienced an immense increase in use. We shared it with them. Usage went over the million for the first time in 1948, and has

remained over a million ever since. It fell off a little and then rose again very slightly last year.—*Mr. Gatliff*: The special sudden advance in the Y.H.A. at the end of the war was partly because in a rather dull world at that time it provided an exceptional chance of adventure and variety. There are now many alternative attractions.—*Mr. Campbell*: In particular there is travel abroad. Usage of hostels in other countries, including Scotland, by our members is far more than usage of hostels in this country by those from other countries, and has increased greatly of recent years.

1533. *Sir George Pepler*: Do you have to be a member of your Association to use your hostels?—*Mr. Gatliff*: One has to be a member of the Y.H.A. or the Y.H.A. of another country. Except for those who come in school or youth group parties the Y.H.A. is a membership organisation. It is also important to keep in mind that it is essentially for those on the move, and not for those who want to stop in one place. Nobody may stay as of right more than three nights.

1534. *Mr. Floyd*: Would you consider that the growing practice of having holiday caravans and sites for the summer affects your members, or is that for a different income group?—*Mr. Campbell*: Possibly it takes some family people who if there were no caravans would go away hostelling as a family, or would push the children off hostelling and go off on their own. One does not know. There may be an indirect effect, but it is doubtful; we do not provide family quarters.

1535. *Professor Stamp*: In your figures you have a drop in the number of hostels, but practically no drop in the number of beds. Does that mean that you find the small hostel difficult to manage and are concentrating on the larger?—*Mr. Gatliff*: This is one of our most difficult problems. We want to have as many small hostels as possible, but in practice it is easier to run economically a hostel of about 50 beds. There are various complications in running the small hostel, whether it be the farm that fixes up a loft or barn for the Y.H.A. or the mountain-hut, and we have not been able to maintain quite the proportion we should like.

1536. *Chairman*: In paragraph 31 there is a statement which possibly relates only to the particular problem of public access. It says 'Opposition is based on traditional conservatism and isolationism, rather than on a reasonable assessment of the merits of the case'. Does that mean opposition to access on land generally, but not to improvements in agricultural practice on the commons, is due to traditional conservatism?—*Mr. Stuttard*: We were thinking of the general access question; a case was cited this morning in the West Riding where there is a reluctance to allow general access to the moors. It is considered that the footpath across them is ample for the benefit of the public, whereas I think we would be in agreement with the Ramblers' Association that we want the moors there so far as possible rather than the mere footpath.

1537. But if any part of the moor was capable of more intensive agricultural production would you object to its being fenced off?—The sort of moor I am thinking of would not be wanted for arable cultivation, and the rambler is not likely to do any damage on it.

1538. I was thinking for example of ploughing up and reseeded for grass.—Most of these northern moors are rather high for that.

1539. *Mr. Lubbock*: Can the rambler not be a danger on the open moors by breaking a bottle and leaving it for animals to cut their feet on?—Yes.—*Mr. Gatliff*: I think that this sentence in paragraph 31 is somewhat based on the sort of argument that one gets when the matter becomes controversial at a public enquiry. In ordinary life probably things go a good deal better than this. As to the problem of ploughing and reseeded or possibly keeping temporarily as arable, it is very much a question of the value in the particular case of what I called access for the eye and access in two dimensions and how much else of that sort of value there may be round about. It may already be lost in a place where there is much scrub.

1540. *Chairman*: The principle to be applied is that in your second paragraph?—Yes.

1541. *Sir George Pepler*: Is there any suggestion that there should be any arrangement by which you could have a hostel built on a common?—If building in a place is a bad thing the building of a hostel is a bad thing too. The

question would not arise in practice; at least it would be extraordinarily unusual. It is just conceivable that one might find some place where it might be the right thing, just as it might be right to build anything else.

1542. May I ask—I think I know the answer—when you build a hostel, do you take rather particular care to see that it fits in with the landscape?—Yes, it is our policy to be very careful about that. The application of that policy when we are offered an old hut cast off by the War Office, or something of that kind, may not be entirely easy.

1543. *Sir Donald Scott*: What proportion of hostels have been built specially, and what proportion have been adapted from existing old houses, or anything of that nature?—I should say that only about a dozen out of 300 have been built specially as hostels. We have used a few large old country houses, but the buildings of character we are happiest with are usually the old mills and the smaller manorhouses like Winchester City Mill and Wilderhope, some of them buildings of the National Trust type.

1544. *Professor Stamp*: By and large the open common lands of the country have no available accommodation near or buildings likely to be suitable for adaptation, have they?—Not usually.

1545. Have most of the dozen or so hostels which you have built actually been built in the remoter areas near to common or to access land?—*Esksdale*, *Maeshafn* and *Langdon Beck* hostels are remote and on the edge of wild open country. *Malham*, *Longthwaite*, *Bellingham* and *Holmbury*, though in or near villages, are also on the edge of wild country, in the last case a large common.

—*Mr. Sturtard*: I can think of an important series of commons lying at the head of *Swaledale* and *Wensleydale*, served by several of our hostels and notably by a little one at *Garsdale Head*, *Abbotside* and *Mallerstang*, *Birkdale* and *Ravenstonedale*. They are very important large commons, extending to perhaps fifteen square miles. The *Pennine Way* runs through them, and they include high fells such as *Shunner Fell*. These commons make very fine wild walking country. It is not likely that anyone could use them for anything but rough grazing as at present; and it is important to have enough hostels reasonably near them, in the dales or perhaps higher up.

1546. Have you any policy of linking your new hostels with schemes for connecting walkers' routes like the *Pennine Way*?—*Mr. Gatliff*: Yes. We are very much up against that problem. Frankly the amount of through chain walking is not so great as to make it economically at all an easy proposition to cover the whole route. There is the same problem on the *Cornish coast* where, as I found at *Easter*, to get between the hostels we can afford to run means an intelligent use of the bus for half the way. One can then walk the cliff properly for the remaining half. It is linked with the small hostel problem, that and the increasing difficulty of getting in with the farmer as we used to in the early days. The prosperity of agriculture which in other ways we so much welcome has made the small hill farmer or the *Cornish coast* farmer less anxious to make a few pounds by providing a dozen beds in the loft or barn.

1547. Is it easier to get a few shillings a night from five people in a car and a caravan with no cost to the farmer?—It is all part of the problem. It is one of the things we are up against in our general policy, and I am not without hope that some time or other we shall solve it sufficiently to improve the chains along the walking routes.

1548. Would you agree there are not many people who really walk from youth hostel to youth hostel along a regular route?—There are quite a sprinkling, but the proportion of people who walk right along a route for a fortnight pretty continuously on foot as I did myself before the war is not large. —*Mr. Sturtard*: It is difficult to speak on that point, but, of course, one does not change the well established pattern of walking merely by declaring on a map that such and such are long distance routes. Until a place has been established few people know about a particular walk. We would not put hostels directly along the walks until the public becomes rather more aware of the existence of them, and shows more desire to use them. As for going off for a fortnight's walking I think it is a very popular idea among members, but, of course, they have their own idea of where they will walk, and largely they walk between our existing hostels, and not between what we put in with question marks on some plan which we might produce in ten years time.

1549. Do you try and get any sort of definite distance between hostels with that in mind—ten or fifteen miles as a day's walk?—We aim at about fifteen for walkers but many hostels in the Lake District, the Peak and North Wales where demand is heavy are no more than eight miles apart. In some parts such as central Wales they are rather few and far apart but there is a minority of our members who like that sort of country very much. As the Lake District becomes more popular—walking is certainly not on the decline there—we find a number of folk who want to go to places that are less attractive to the general public but provide the wild open country which they are looking for.—*Mr. Gatliff*: I think there is one other point to bear in mind on this problem of such routes as the Pennine Way. Some of the folk who walk these long routes are also to some extent campers. They mix camping and hostelling.

1550. Is the Youth Hostels Association really interested at all in the maintenance of commons or the commons system provided that the same type of land remains and is available for walking and access?—That, I think, is a rather misleading way of putting it, because we should feel that the values which we are interested in are to an appreciable extent safeguarded by maintaining as much as may be of the commons system. If the ultimate result can be secured by, say, an immense amount of land passing to the National Trust or similar ownership then it would arise in the way in which you put it, but so far the practical results on access are a bit disappointing.

1551. *Chairman*: Have you a secondary interest in the fact that there is accepted public access to common land, is that your real interest?—Yes, that is our practical interest.

1552. *Mr. Arnold-Baker*: You say in paragraph 27 of your memorandum that in your view the status of land as a common offers a better safeguard for its continuing availability for public access (legal or customary) than is secured by planning legislation. Would you argue that the present state of the law is such an adequate protection that you would not really want it changed?—If the other means of making land available were as effective and permanent as one had rather hoped the access legislation was going to be, then we should be much less concerned with maintaining the commons safeguard.

1553. *Chairman*: In paragraph 46 you refer to a warden service. Would you like to elaborate that a bit?—*Mr. Stuttard*: It is run by the Peak Park Planning Board. There are a large number of rambling clubs in and around the area, which is roughly the Manchester and Sheffield area so far as population is concerned, who provide volunteers weekend by weekend throughout the year. Their primary purpose is to ensure that there is good conduct on Kinder Scout. There is the secondary one of helping folk who may get lost on this very difficult piece of country. It is high plateau subject to mists, and very rough, with deep channels in the peat called groughs running right across it. The area is much used and has a long history of clashes between ramblers and gamekeepers on access. With the very large urban population of some millions around the Peak District, taking account of Yorkshire, Lancashire and Derbyshire, undoubtedly there have been rowdy elements there in the past but the ramblers would say that it has not been helped by the attitude of the gamekeepers and their employers. Something of that was felt to remain in the area, making it specially important to avoid any hooliganism. It is largely a self-help arrangement almost entirely manned voluntarily by ramblers. There is only one paid officer, who, incidentally, was once our warden at the local youth hostel. It is his job to prepare the rosters and see that everything runs smoothly.

1554. Is it intended to clear up litter after Bank Holidays?—It is intended to ensure so far as possible that litter is not dropped.

1555. Would it also, for example, stop people putting their old iron, bedsteads, and so on on the commons?—They could not take their old iron up Kinder Scout. The top is 2,000 ft. up.

1556. A very great problem in the neighbourhood of London also is, of course, what people who have access leave behind. I wondered if you were intending to cover that?—It is a very difficult problem in the commons round the metropolis and in the lowland parts. We put it forward as a suggestion that in some cases it might be worth while having a warden service.—*Mr. Gatliff*: We have done a certain amount in the way of special litter clearances on one or two of the big National Trust places round London by arrangement with the Trust, and I think I am right in saying that

the Trust were well pleased with the result, but it is a palliative and not a cure.—*Mr. Campbell*: Our policy there is not to clear litter after but before a Bank Holiday and make it known that it has been cleared in the hope that people will not drop litter during the actual Bank Holiday itself. Our activities have not been entirely restricted to National Trust properties. We had a clearance of litter before Whitsun at one place in Kent, Keston Common, for which the local council are responsible.

1557. *Professor Stamp*: Do you have any disciplinary system with your own members, supposing you have any who are flagrant offenders in the matter of litter?—*Mr. Gatliff*: The problem of how far we can discipline our members outside our hostels is a rather difficult one, but I think that indirectly we have been able to exercise a fair amount of control. In one case I know we did exercise it most vehemently. I think that it is reasonably effective in practice, whatever the theory.—*Mr. Stittard*: I think it is important to get clear that you cannot have a warden service except through by-laws or their equivalent, so it is quite tied up with the suggestion that there should be legal public access to commons. At the moment you may have a particular common on which the public have de facto access. They have been going there for years, they drop litter and no one can do anything about it. If it became law that there was a legal right of access by-laws, including if necessary a warden service, could be applied, as under Section 193 of the 1925 Act.

1558. *Mr. Lubbock*: In the Peak it is, I think, under the 1949 Act.—Again it is interesting that unless you enter into access agreements within a National Park you cannot have a warden service. At present Dartmoor is a disgusting mess in some parts in the summertime, but no access agreement has yet been made there.

1559. *Chairman*: On paragraph 55. I am not quite clear why the Youth Hostels Association has a dislike of using common land for arable purposes.—*Mr. Gatliff*: I think our feeling on this is that if you convert land permanently to arable at best you substitute one or two footpaths for a general roaming space. There may be particular cases where the resulting value is a better one. It depends to some extent on the relative importance of going over the land involved and looking at it, and also on

exactly how it is going to be done. If it happens to create a first-class arable field with a really good footpath to the local church and pub it may be a more appropriate part of the whole village scene, but generally unless we are sure that there is other good roaming space round about we regret the loss of any which becomes arable land.

1560. You do in fact qualify paragraph 55 a little saying that the Minister's sanction should only be given where, after public inquiry, it is found that commoners' rights cannot be exercised.—We also say 'and is not likely in future to have any value for public access'. In a particular case public access might be adequate by means of a footpath, but we want to see any change come only after the fullest consideration and weight have been given to all the values concerned.

1561. *Sir Donald Scott*: Paragraph 56 rather alarms me. Is it intended that commons should become a sort of nature reserve for rare weeds? I should object as a farmer to having a common next to my farm with the rarer weeds blowing across to my land.—One must clearly draw a distinction. This is a particular case of what I said earlier about the entirely 'useless' beauties of gorse and bracken and birch scrub and so on. If something which is beautiful is not merely useless but a danger—one that occurs to me is ragwort which I sometimes see as a thing of great beauty, but which is a most horrible danger I believe to the surrounding agriculture—that becomes a quite different problem, and we should not back the preservation of dangerous weeds.

1562. *Professor Alun Roberts*: Regarding the implication of the first sentence in paragraph 56 one remembers how often the use of the plough for a year or two is the best way of bringing derelict land back to grass. As an instrument to bring land back to good grass would it not serve both the farmer and the youth hosteller?—If for a year or two the land is ploughed and then returned to much better grazing and the like, we should whole-heartedly welcome that.

1563. I would suggest that for every acre that would be under the plough for permanent arable cultivation there would be another acre derelict or semi-derelict to be turned into good pasture by ploughing and that would serve both the farming community, the Ramblers' and the

Youth Hostels Associations.—We should generally accept that. There is the marginal case which probably does not arise on commons, but more perhaps on the South Downs where bringing land back to first class pasture by reseed-ing may destroy the traditional turf such as one finds along the ridge of the eastern South Downs. One would certainly not want to see that one hundred per cent. arable, but that is a special problem. Generally temporary ploughing to get back a true well-grazed common is an entirely different thing from our point of view from permanent arable, or anything of that sort, and is a thing we should welcome.

1564. *Chairman*: Is there anything you would like to say that has not been brought out properly in the course of this discussion?—No, I think that I gave a broad indication of our views on the forest problem. Many of us are very keen on forestry and sympathetic to it. We accept Kielder but we do not want to see too much of the upland commons turned into Kielders. I think that if it were a choice between forestry and hill sheep farming we would think that from the point of view of access and landscape it was worth forgoing some economic value to retain hill sheep farming rather than forestry.

1565. *Professor Stamp*: You have something like 200,000 members. Have you any means whereby you can test the point of view of the rank and file of your membership? I can understand as a council you have certain views, but is there anything in the nature of a Gallup poll, any test of that sort of the rank and file? I ask that because I am often shocked when taking parties of students for their field classes and getting them put up in youth hostels at out-of-season times that the things which they appreciate and the things which they criticise are so often utterly at variance

with what I would previously have believed from my own point of view. —Of course one refers these matters to the regions of which we have 19, as well as to our central committee, but that merely puts the question one step back. The real answer is that those of us with responsibility for these things make a point of watching when we are about in hostels and trying to sense what it is that appeals to our members. It is a difficult thing to do, and I do not at all claim that we have done it as fully as we would like to, but we do get some sense of the sort of things that they seem to value.

1566. Suppose we converted the commons of mid-Wales from a barren landscape into one with a lot of artificial lakes supplying water to Midland towns and surrounded by afforestation of exotic conifers of very beautiful character, still leaving small patches of open common land, is it not likely that the rising generation would appreciate that as a form of balanced beauty far more than anything which exists at present?—I would not put it as strongly as that. I would not be in the least surprised to find that a lot of them appreciated it. When I was on the top of Great Gable there were two people looking down at the Ennerdale forest; one said 'It is horrid' and the other said 'I quite like it'. There is a tendency among the young when they are feeling full of life to accept change and enjoy what is before them whatever it may be, but I think a lot of them would feel the loss of the wilder kind of roaming space. One does not want to be dogmatic, but I think the love of the wild open space is pretty widely felt among those who go to remote places.

Chairman: Thank you very much indeed for your memorandum and for coming along.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

11

Wednesday, 20th June, 1956

WITNESSES

Welsh Plant Breeding Station, Aberystwyth
Colonel F. S. Morgan, C.B.E.
Welsh Pony and Cob Society



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WEDNESDAY, 20th JUNE, 1956

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Director

MR. LL. IORWERTH JONES, B.Sc.

Officer in charge of Grassland Agronomy

on behalf of the Welsh Plant Breeding Station

COLONEL F. S. MORGAN, C.B.E., E.R.D., D.L., J.P.

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Chairman of the Council

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Member of the Council

MR. T. WILDING-DAVIES

Member of the Council

MR. J. A. GEORGE

Secretary to the Society

on behalf of the Welsh Pony and Cob Society.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at the County Hall, Llandrindod Wells, Radnorshire

Wednesday, 20th June, 1956

Present:

MR. ALAN LUBBOCK, J.P., D.L.

in the Chair

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

PROFESSOR ALUN ROBERTS, Ph.D.

DR. W. G. HOSKINS, Ph.D.

SIR DONALD SCOTT

MR. IVOR MORRIS, J.P.

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MRS. F. B. PATON, J.P.

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Director, Welsh Plant Breeding Station, Aberystwyth

The Welsh Plant Breeding Station was established in 1919 through the foresight and generosity of the Rt. Hon. Lord Milford, LL.D., Llanstephan House, Radnorshire. As a research department of the University College of Wales, Aberystwyth, the Station is administered by the College and is supported financially by Government grants based on the recommendations of the Agricultural Research Council.

The primary activities of the Station concern the breeding and development of new strains and varieties of grasses, clovers and oats, and the improvement and management of grassland.

Much pioneer work has been carried out, and several improved varieties and strains of these crops have been bred, which are now widely used in British agriculture. Of no less importance than the breeding of new grasses, clovers and oats, have been the researches into seeds mixtures, and the establishing, manuring and management of short- and long-term leys which have greatly contributed to the successful development of intensive grassland management.

The grassland management studies which included work on hill pastures led to the establishment in 1933, through the benefaction of the late Sir Julien Cahn, of the Cahn Hill-Improvement Scheme, and to the improvement of hill pastures on a commercial scale. These were problems which greatly interested the first Director of the Station, Sir George Stapledon, who was acutely aware that the low productivity of much of our hill grazings could be vastly improved.

With the new facilities, and the advent of the tractor and better equipment for the ploughing and cultivation of these billy tracts of land, techniques were evolved which enabled the old turf to be destroyed and new grasses and clovers to be sown. Selected areas were chosen for the initial trials, and many of these were ploughed and seeded-down successfully on the open bill. It was interesting to observe the way in which these new areas developed, and the manner in which the sheep crowded on to them from the surrounding unimproved zones. It was soon apparent that unless the improved areas were fenced off they would quickly deteriorate if the

new growth was allowed to be continuously and closely eaten off by a heavy concentration of sheep. As the experimental work proceeded members of the research staff felt convinced that by these new techniques marked improvement in production could be obtained, and that to maintain the improved areas in a thriving condition periodical liming and manuring, as well as control of the grazing animal, were essential factors.

One of the next steps in the development of this particular phase of the work was the fencing in 1944 of a relatively uniform block of 30 acres of hill land, so as to be able to study under controlled conditions the persistence, stock-carrying capacity and effects on the health and performance of the grazing animal of the new pastures. This enclosure was subdivided by fencing into three plots reasonably similar in depth and kind of soil, gradient and aspect, and each ranged from about 1,100 to 1,300 ft. in altitude. One of the plots so enclosed was typical of a good mountain bent-fescue pasture which in an earlier trial had given the best production of the various kinds of natural hill pastures hitherto tested. This portion was used as a control plot; the two others adjoining had previously been ploughed, manured and sowed to grass in 1934, and between 1933 and 1943 had received the equivalent of three tons of ground limestone and 13 cwt. basic slag per acre.

In 1944 the latter, designated Plots 2 and 3, were ploughed in the spring, cultivated and sown with a seeds mixture in July, following an application of 6 cwt. basic slag and 1 cwt. nitro chalk per acre. Plot 2 was sown with seeds of commercial strains, and Plot 3 mainly with bred strains of the counterpart commercial species.

As soon as the seeds mixtures had established groups of Welsh mountain ewes were placed on each plot in numbers equal to its estimated carrying capacity. Periodical weighings of the sheep and their lambs were carried out during each of the successive grazing seasons. In addition, the ewes and lambs individually were graded and valued once a year, the lambs at weaning time, about the third or fourth week of August. The values were based on the prevailing market prices at that period. The separate flocks on each plot were maintained by mating to the same rams, and during the off-grazing season, January to April, all three groups of sheep were wintered together as a single flock on a common lowland grazing.

Details of the lamb production and number of ewes carried by each plot over the six-year period September, 1945 to September, 1951, are given below. It is important to bear in mind that this is not a replicated trial and that the results are based on the performance of the individual plots:—

	Unimproved pasture Control	Improved pastures sown with	
		Commercial grasses	Pedigree grasses
		Plot 2	Plot 3
Average number of ewes grazing per acre ...	1.5	2.4	2.6
Number of lambs reared per acre in 6 seasons	7.3	14.7	15.7
Number of lambs reared per 100 ewes ...	80	101	102
Average weight per lamb	40.8 lb.	50.8 lb.	53.5 lb.
Average grading per lamb*	5.0	6.7	7.2
Average value per lamb	34s. 0d.	48s. 0d.	54s. 0d.
Weight of lamb produced per acre in 6 years	298 lb.	747 lb.	840 lb.
Total value of lamb produced per acre in 6 seasons	£12 7s. 6d.	£36 3s. 0d.	£42 3s. 0d.

* Grading scale (to indicate condition of lamb):

- 10—prime fat
- 8—fit for slaughter
- 6—store condition
- 4—poor stores
- 2—'cull' lambs

The above particulars have been taken from a report by Mr. Ll. Iorwerth Jones, Officer in charge of Grassland Agronomy at the Welsh Plant Breeding Station, under whose supervision the work was carried out. The figures show that Plots 2 and 3 in comparison with the unimproved sward (a) maintain more ewes per acre, (b) the ewes are of higher fertility resulting in the production of about twice as many lambs, and (c) produce lambs of bigger weight, in better condition and of much higher money value.

It is often asked how long can such improvements in production be maintained. This depends to a large extent on the application of appropriate methods of husbandry. To secure evidence on this the plots are being continued without change, excepting that the improved plots, Plots 2 and 3, were given a top dressing of 12 cwt. basic slag in 1950, and a further application of 6 cwt. basic slag and 2 tons of ground limestone per acre in 1953.

The figures of relative production for the control plot and bred strains (Plot 3) for the year 1954-55, the eleventh grazing season, are as follows:—

	Native pasture	Improved pasture
	Control	Bred strains
Number of ewes carried per acre	1.7	3.1
Average weight of ewes 30.8.55	67 lb.	94½ lb.
Average grading of ewes	4.8	6.7
Average value per ewe	65s. 0d.	87s. 8d.
Number of lambs reared per acre	1.2	3.1
Number of lambs reared per 100 ewes	75	100
Average weight per lamb (singles)	37½ lb.	51 lb.
Average value per lamb (singles)	48s. 6d.	74s. 6d.
Average weight of lambs produced per acre	49 lb.	153 lb.
Average value of lambs produced per acre	63s. 0d.	223s. 0d.
Value of draft ewes per ewe	51s. 3d.	84s. 0d.
Value of ewes drafted August, 1955, per acre	20s. 6d.	59s. 2d.

These figures show that the improved plot continues to maintain a marked superiority over the unimproved native pasture in respect of weight, number and condition of the ewes and lambs, and in gross financial returns.

Improvement by surface treatment

From another series of experiments at Llety-evan-hên there is evidence that marked improvements can be obtained in the botanical composition and stock-carrying capacity of hill pastures by the direct application of lime and phosphate, or lime plus complete fertilizer, together with the surface sowing of appropriate areas, and without ploughing and cultivation, providing the land is not overgrown with dense bracken or gorse. Changes at first are slow, but investigations now in progress indicate that by oversowing the limed and manured areas with seeds of appropriate strains of grasses and clovers the rate at which improvement takes place can be accelerated. Simultaneous with the change in the species-content of the native herbage there is an improvement in the total yield of herbage and its chemical composition.

Common land in Radnorshire

During the last war I was seconded to the staff of Radnorshire War Agricultural Executive Committee for a period of about three years (June, 1940, to April, 1943), firstly to organize and take charge of a field-by-field survey of all the farms in the county, subsequently as Technical Advisory Officer, and later, for the latter half of the period, as Chief Executive Officer.

There are large areas of common lands in the county which, due to changes in the agricultural economy of the second quarter of the present century have consistently deteriorated. Early in 1941 steps were taken by the Executive Committee to secure the consent of the commoners to allow the more accessible and improvable

portions to be taken over by the Committee for the period of the war, and to be fenced off for cropping purposes. Much of this land was so densely covered with bracken and gorse as to provide little pasturage for sheep. A start was made in the autumn of that year by taking over the more accessible areas, which included parts of Ffynnonynydd Common (52 acres), Broadheath Common (22 acres), Rhosfaelog Common (73 acres), Little Mountain (114 acres) and Newchurch Hill (302 acres), and in the year following Litton Hill (254 acres) and Begwns Hill (302 acres).

Newchurch Hill in particular when taken over was almost entirely covered by a dense growth of bracken 4 ft. high, studded here and there with gorse bushes; the depth of soil was good and this enabled the bracken to be completely buried by ploughing about 10 to 12 inches deep and 20 wide. This hill, and also the other areas, as would be expected, were deficient in lime and phosphate, and when these deficiencies were made good, and the land had been got into a suitable state of cultivation, excellent crops of potatoes, oats and rape were grown, yields of from 6 to 9 tons per acre of potatoes and from 15 to 30 cwt. per acre of oats being obtained. When subsequently the land was sown down to grass, good grazing pastures were produced. On the other hand on those areas where no fertilizer was applied the yields of oats were as low as 5 cwt. per acre.

Land Utilisation

The altitude and climatic conditions of these upland areas largely predetermine the adoption in normal times of a grassland system of farming based on cattle and sheep, and on the poorer hills mainly sheep with little or no arable crops. Large portions of these hills are unsuitable for general and repeated arable cropping because of their steepness or inaccessibility, and the frequently high summer or autumn rainfall which makes the safe harvesting of crops uncertain and difficult. Where the hill areas are accessible and of a suitable contour speedy improvements can be effected by ploughing, harrowing and reseeding, either directly or preferably after pre-cropping with rape and hardy green turnips. Apart from the value of the latter as a crop for fattening lambs during early autumn, these crops serve to build up the surface fertility and help further to ensure a satisfactory establishment of newly sown seeds. Many large areas now covered by deep bracken can be made into highly productive grazings capable of carrying cattle in a good thriving condition. Other areas of lower potential fertility can by these methods, or by surface treatments, be considerably improved and made to carry double or nearly treble the number of sheep now carried by the unimproved sward.

In a small majority of cases low production and poor utilization of hill land may be due to the disinclination of the occupier to improve and develop his land, but in general this is certainly not the case, since there is evidence that a large and increasing number of hill farmers are taking advantage of one or other of the Government-aided schemes to develop and improve the more accessible portions of their hill grazings in small and even large blocks, and are doing so with considerable success. This is particularly so when the land is under the complete and direct control of the farmer.

Where the hill areas are grazed in common with other users the situation is highly unsatisfactory; little, if any, improvement can be observed, and there is evidence of deterioration. This system of land tenure needs to be resolved before the large tracts of land so held can be profitably developed and fully utilized.

I am informed that many of the hill areas which were temporarily enclosed to be ploughed, limed, fertilized and cropped during the war years in Radnorshire have, in accordance with agreements made with the commoners at the time of taking possession, been returned to the commoners and the temporary fences removed. In the process of time these improved areas without the joint efforts of the commoners to maintain good management standards will soon deteriorate and decline in stock-carrying capacity.

I regard the need for some solution to this problem of common grazings as urgent, since without separate and individual responsibility for the management of such lands no farmer will, or can, be expected to embark on land improvement projects.

Examination of Witnesses

PROFESSOR E. T. JONES, M.Sc., and MR. LL. IORWERTH JONES, on behalf of the Welsh Plant Breeding Station,

Called and Examined

1567. *Mr. Lubbock*: It is very good of you to come here today and to have written your interesting paper, which all the members of the Commission have read with interest. We welcome the opportunity of talking to you about it. To start at the beginning, would you perhaps tell us a little more about what exactly the Welsh Plant Breeding Station is? Is it an independent institution of the University College of Wales?—*Professor Jones*: Yes, that is so. It was founded on private donations, but shortly afterwards as a research department of the College it became eligible for grants in aid of research. The grants are made by the Agricultural Research Council and now cover the whole of the capital and maintenance costs. It receives no income from the University.

1568. Is the station independent in carrying out its policy, except that the latter is considered by the Agricultural Research Council?—Yes, the research programme is based on proposals submitted by the Director which are agreed from time to time, with or without modification, in consultation with officers of, or members of a visiting group appointed by, the Agricultural Research Council.

1569. In the third paragraph of your memorandum you begin to touch on the technical points. Would you, for the advantage of those of us who are not agriculturists explain a little what you mean by short-term and long-term leys?—We would regard a short ley as one lasting for anything from six months or twelve months to two years. Occasionally it may run into three years. Long leys may be regarded as leys that have been sown for the express purpose of remaining down to grass for periods of more than three years, perhaps up to ten.

1570. Do you regard such leys as feasible on the kind of lands that we are discussing this morning?—Short-

term leys are frequently adopted in conjunction with arable farming. On the specialised dairy farm practising frequent rotation of grass cultivation there would be a certain proportion seeded down for short-term leys. The question is not so much short and long as whether grasses that respond quickly and are of short duration are employed, or whether the pasture is intended to be down for a long period, requiring employment of somewhat different mixtures. For the kind of land we are now discussing the long ley would be the one mainly required.

1571. *Professor Stamp*: In the next paragraph you refer to Sir George Stapledon and say that he was acutely aware that the low productivity of much of our hill grazings could be vastly improved. I think I am right in saying that Sir George Stapledon, from your point of view, did distinguish the hill lands of Wales which could be improved, and those which, because of rocky outcrops and so on, could not. Have you any idea of the relative proportion of land improvable in the sense in which you are tackling it?—No, I am sorry I cannot give you figures. You are quite correct in saying that improvement does depend, to a certain extent, on whether the land can be ploughed; that is one type of improvement. Of course, if the rocky outcrops are numerous, one obviously cannot plough, lime, fertilise and reseed. There one is up against the physical problem. The technical problem of land improvement is something on which we have a great deal of information, but land improvement still remains a physical as well as an economic problem in certain instances, depending on the character and situation of the land.

1572. As far as physical improvement is concerned, do you include disc ploughing or discing? If you have an area of moorland with certain rocky out-

crops, I think it is possible to miss the outcrop and then go on discing again?—Yes. You can employ discs where you cannot use the plough.

1573. My second technical point is, is it necessary to carry out a survey of the common land in which you are interested to see which is improvable from your point of view?—Yes, certainly before anyone embarks on land improvement he should survey the area to see what kind of improvements are possible physically.

1574. If we consider the common land of this central part of Wales, would a certain proportion only be improvable from your point of view?—It all depends on our definition of 'improvable'.

1575. I am thinking now of discing or ploughing, and reseedling for the improvement of carrying capacity for sheep and cattle.—I think we had better be quite clear on this point. The physical problem mainly relates to ploughing and improvements, using heavy machinery extensively. It is however possible to improve much of the more difficult land by surface treatment—liming and phosphating—followed by surface seeding, in other words, to restore and improve the fertility of the soil. This must be coupled with grazing control and good management. That is the key to all improvement, and I would not like to be asked, 'Can this land be improved and not that?', because there are ways and means of dealing with the different kinds of physical conditions. They can be modified and improved. If it is a case of waterlogged conditions, they can be improved by drainage; if it is a case of acidity, improvements can be effected by liming. In all cases, if we spend money on land, we must be in a position to control the grazing management after we have carried out the improvements. That is absolutely vital. We can spend a lot of money applying lime and fertilisers, but if we do not control the subsequent grazing of the improved herbage, the value of such improvements will rapidly decrease. Most of our common lands could be improved by one means or another.

1576. In other words, in controlling the grazing according to the improvement which is effected, you have to define the carrying capacity of the land in terms of stock?—That is right, under-grazing

or over-grazing would cause rapid deterioration of the herbage.

1577. With regard to improvement, do you accept the general principle of Stapledon's ecological survey as an indication as to potentiality? I am thinking of his use of cotton grass, *Molinia*, *Nardus* and so on, as an indication of the possibilities of land. Is that broadly the right approach?—I think it does give a very good indication, but one may sometimes find that land may be of higher quality than would appear from the existing surface vegetation.

1578. What sort of investigation or survey of common lands then do you consider would be necessary before we could make any recommendations as to their use?—In relation to the extent to which improvements are required, you would for example make a survey of all common lands considering—as, indeed, you have got to consider—the use of that land in relation to the requirements of farmers in the area. There may be certain common lands which would be invaluable if they could be put at the disposal of individual farmers. The kernel of the question is this, if the hill land is tied to a local farm the benefits to be derived from improving that land will, in some respect, depend upon the system adopted by the farmer in his lowland farm. If he is to use the common land to the best advantage, he must be in a position to integrate his farming activities in the lowland and upland.

1579. *Mr. Lubbock*: That introduces something you might perhaps enlarge upon—the general system of sheep husbandry in Wales.—As to the general system I think there will be other witnesses who will be able to speak with more practical knowledge of the farming problems. I would prefer to keep to matters which are technical. Taking the several farming systems in Wales, there is first the hill sheep farm where the unit is composed almost entirely of sheep. There will be a very small amount of arable land in the holding. That is one type of farming system which is generally practised with sheep of hardy mountain breeds, sheep being maintained on hill grazing practically all round the year. The female lambs would be sent away for the winter period to a lowland farm and most of the wether lambs sold

in the autumn. Some wethers, however, may be kept on the hills until three or four years old. On the less elevated hill lands the management of the hill would be more closely tied up with the farming system of the lowland farm, the hill being used for summer grazings and to carry such stock as the farmer requires to meet the needs of his lowland farm. I would rather not go into details of the farming system except to lay stress on this point, that the maximum improvement and utilisation of hill or rough grazing land can only be achieved where it is under the individual control of the farmer or when it can be developed and improved in conformity with the needs of the lowland farm.

1580. In your paper you only discuss sheep, but cattle are complementary in those conditions, are they not?—Yes. We have done some experiments with cattle, but the reason why we have used sheep is that we can keep so many more on plots of a limited size and sheep are more manageable for experimental purposes. We use sheep as a technique for assessing the herbage yield under grazing management. We have also used cattle along with sheep and we have had increments of live weight of 2 lbs. per day when cattle are introduced as one beast to 4 or 5 acres of land. This increase of 2 lbs. per day live weight was obtained on the improved sward as compared with roughly half a pound on the unimproved herbage. We have no evidence that cattle as opposed to sheep would give different responses when grazed on improved herbage, but we do appreciate that, in general, a rather higher level of fertility and better grass are required to maintain cattle than sheep. In our experiments we use stock purely to assess relative improvements in the sward and also to study the effect of those improvements on the health of the grazing animal.

1581. *Sir Donald Scott*: Would you say that the tremendous advance which has been made in the science of grassland husbandry has not been quite caught up with by veterinary science? When you increase the number of sheep on a particular hill or mountain grazing may there be a tendency to have more disease?—I think we are far from that at the moment, but density of population, whether of sheep, cattle or even human beings, appears to be closely related to the problem of increased inci-

dence of disease. There are undoubtedly diseases which appear to become more frequent with increased intensity of stocking. There is room for further study as to how often you should move sheep from one paddock to another, but these are problems more particularly affecting the lowland farmer where their production per acre and density of stocking are very much higher than in the hills. It is however a problem which has to be borne in mind under conditions of intensive grassland farming. I do not think it is likely to cause major concern on hill grazings until we have reached a level of stocking of high intensity or where management of the grass and the grazing is not as good as it might be.

1582. *Mr. Evans*: On the area of the blocks for the control of grazing that is so essential, in paragraph 6 of your memorandum you mention uniform blocks of 30 acres in a particular experiment. Would you say that is the optimum area?—No, that was a convenient unit for our particular purpose. We were there concerned with comparisons of experimental treatments rather than with unit size for control under field or farm management, where the block size should be related to the size of the flock. On an unimproved hill about 10 acres are needed in order to carry two or three sheep and their lambs as a control plot. This is a minimum size, and as it is extremely difficult to get on any individual hill large blocks of uniform land which would give a satisfactory comparison, we have to adjust the size of the plot units to the area and nature of the land available.

1583. I was really thinking of the fencing problem and whether it is possible to fence in a comparatively large area and still have control of grazing?—Of course, we are moving here from the experimental to the practical. On the practical side there is the need to be able to conserve grass for particular grazing purposes. When we consider the problem of hill farms and their management, if we are to get the most out of the hill land, we must have both summer grazing and in-bye—and with some divisions of the in-bye, so that some grass in the in-bye can be conserved *in situ* for the flock during the difficult periods of the year, that is, the late winter and early spring. There would need to be some sub-division to provide the in-bye. I am not thinking of

the management of hill grazing and hill farms on the basis of the controlled system of management which we have in our lowland dairy farms, such as strip grazing or very small paddocks. I envisage sufficient fencing and subdivision as would enable the whole of a particular hill grazing to be under the control of the farmer, so that he can take steps to provide grass and fodder for his flock during the winter and spring period.

1584. *Mr. Lubbock*: 'In-hye' is a technical term, which perhaps you would explain.—'In-hye' is a term that is used in some localities to differentiate the hill proper from land which lies at the fringe at a lower level and in the most sheltered situation. When sheep are brought down during the bad weather to a better protected region, they are put in the 'in-hye' which is fenced off and under the farmer's direct control. Such facilities are not available in connection with common lands where without some form of enclosure the farmer has no means of protecting a selected area and treating it in such a way as to provide food and protection for his flock during the winter period.

1585. *Professor Alun Roberts*: May I ask, knowing that you had a close interest in Radnorshire farming during the last war, for your opinion as to the degree to which commons in Radnorshire, on war-time evidence, are at present being put to their full potential? Are they as common grazing being used at one-fifth, one-half or three-quarters of their full potential?—I am very glad you raise this point. When I was in this county during the war years I was greatly concerned about the unutilised potential of a lot of the common lands here. The soil on the hills is deep and of good texture and on many commons at that time one found four feet of bracken but little or no grass. When ploughed, limed and cultivated, during and after the war, crops were produced equal to crops on the lowland. As far as potential cropping capacity is concerned, the fertility is good, but nothing can be done to bring the land into cultivation, because no individual commoner has a right to put a plough into the common. Take the case of Newchurch Hill, 290 acres of which we enclosed and which before enclosure were almost completely covered with bracken. After ploughing and cropping with potatoes, oats were sown which

when combine-harvested gave an average yield of 23 cwt. per acre. This was an average much higher than that for the county as a whole.

1586. Would you agree that the key historically is the lack of land hunger in this area in the 18th and 19th century? Had these commons been 50 or 60 miles further south, nearer the mining valleys, and had the land pressure been there, would considerable farm units have been carved out of such land?—I would not like to offer an opinion about that, but one can quite well see that might have been the case. It would seem to me that today we have to consider the problem of common lands first from the point of view of 'Do we need to get further production out of our hill land?' The second question is, 'Can we do it without inclosing?' The third is, 'Do we need to inclose all our common lands, or should we exercise discretion and look at each according to its potentiality for improvement?'

1587. But on the wartime evidence on Newchurch Hill, Llanhister Common and so on, the potential is there for more productive use?—Very definitely. Much of that land is as good as—I would say, almost better than—a lot of the inclosed land.

1588. Have developments in a changing agriculture and the different requirements today—for stock improvement, such as grading up to attestation—caused grazing to be less used on commons now? Do farmers working up to attestation not dare to put on the common the horned stock that they did previously because they cannot get the isolation that grading up to attestation would demand? Is this one factor why these commons are being under-grazed today?—Undoubtedly since World War I there has been a big change in the kinds of stock kept on farms. We have changed over to the cross-bred lambs which require better treatment. The effect of that is that in the absence of improved hill grazings they are kept on a lowland farm for a long period. There is a tendency for the stocking on the hills to deteriorate, but the effect of the hill farming schemes has been to increase the sheep population very rapidly on the hills in recent years, and we are now beginning to face the danger of overstocking on those hills where farmers have common grazing rights. Regarding cattle, we will only get them return-

ing to the hill grazings when improvements in the quality of the grazings have taken place. I very much doubt whether sending approved attested cattle on to poor hill grazings is very commendable, but I certainly consider that the hills here in Radnor, for example, the common lands lying round Newchurch, would, if ploughed and improved, make excellent grazings for attested and other cattle for the summer months.

1589. Can you see that improvement coming about while the lands still remain commons?—Nothing will or can be done unless we can give the farmer the opportunity to plough and improve the common land, to make it more productive and to tie it up with the present-day requirements of early maturing stock and more milk. You cannot produce fat lambs on these poor pastures.

1590. *Mr. Lubbock*: You gave us a very full description of the experiments you have carried out. You did not however mention the economics of them. I take it that is not really within your purview?—We are interested, of course, in the economic aspects. These improvement processes need in the long run to be profitable, and unless this is so our investigations become highly academic. But our main tasks are to study first of all methods and techniques of land improvement. We cannot assess profitability on the basis of prototype experiments, but the evidence derived from the increase in stock-carrying capacity does give an indication of what the profitability is likely to be, and anyone who has data of costs of cultivations could make his deductions from the estimates of relative production. We are primarily concerned with techniques—breeding of improved strains, testing under these conditions, and the study of methods as to how the new pastures should be managed in order to give the maximum production or the best production at some particular season of the year.

1591. *Professor Stamp*: There is one further point. The actual plots on which you have been working are at an altitude of about 1,100 to 1,300 feet. Would you say there is an upper limit of altitude at which land could be improved from your point of view, and that above that, other uses or the existing use should continue?—May be. It is an extremely difficult question to answer, but altitude

again is related to whether the land is inland or coastal. Around the fringe of the coast 1,000 feet is very exposed, whereas here in Central Wales 1,000 feet is not high. Most of this county is above 600 or 700 feet and some goes up well above the 1,100 feet level. That becomes very much a ceiling altitude when considering arable production—the growth of grain crops—but it is not a ceiling in relation to grassland improvement.

1592. Arising from that, we naturally think also in terms of public access to common lands, which are attractive from other points of view as well as grassland improvement. Is there any objection to public access, to people walking over reseeded areas?—It depends on numbers. I do not think an occasional village fête on a common would cause serious deterioration, except to leave a lot of litter. The problem of public access depends upon the way in which the public makes use of that privilege. Actual damage in treading is little. It depends too upon the nature of the crop and the particular stage of its growth. Of course if it were a cereal crop, one would not want lots of people walking through it, but there is not the same objection to walking over other land provided gates are not left open and dogs do not worry the flocks or to access to the mountains provided it is a recognised access. The owner of the land knows that access varies according to the terms of reference of his ownership. Also we have our National Parks. I do not think we should look at the problem of inclosing common lands solely from the point of view that there must always be access to all common lands. I think we have got to say that National Parks and certain commons are perhaps more suitable to be given up, shall we say, for access by suitable lanes and paths, but there are other lands in this county which should be inclosed and farmed intensively. I do not think that we should inclose these and at the same time preserve free access.

1593. You are going much further as a result of my question than I intended. I was thinking purely in terms of your own work in improvement of pasture. To come back to that point, the fact that you are working on particular hill land would not be a reason for preventing the public from going over that land? I know

cereal crops are another matter. You mentioned National Parks. Would you conversely say that because of an area being set out as a National Park you would not want to bother about improving the land?—No, that was the point I intended to make, that the two things can be combined. My point in relation to the question of public access is that we should consider very carefully how far it is going to interfere with food production in particular areas which are valuable for food production.

1594. *Mrs. Paton*: Is it your experience that the public uses the land that has been improved in a detrimental way?—I have not had any evidence of that.

1595. *Mr. Lubbock*: If we can go on to more general points, can you tell us anything about the existing commoners? Can you generalise at all on how their rights are defined?—I am afraid I have very few details or valid information about this. My experience is confined to the occasions during the last war when we got all the commoners together to agree to fencing certain parts of the commons. Providing we undertook to return the lands to them, we found them quite ready to agree to enclosure because of the emergency, and the schemes worked very satisfactorily.

1596. At the end of your paper you speak as though the formation of associations of commoners for carrying out improvements was out of the question. We have actually seen and had evidence of many places where very successful associations have been formed and work has been done in co-operation. What is your opinion of that?—I would regard that as a first step under conditions as they now exist. It is about the only thing commoners can do at the moment, and it does show the desire on their part to do something to improve the production of the common lands, but it is going to detach the hills from the lowland farms if commoners proceed with such steps on a large scale.

1597. You mean the policy on the hill influences the policy on the lowland as well, and vice versa. You are concerned, are you not, with their integration?—Yes, with better utilisation of the lowland and its relation to the upland. To proceed on the basis of common action on the hills leaves no room for private enterprise

or initiative, and will undoubtedly produce a deadlock.

1598. *Sir George Pepler*: Do you think then there has to be a combination of the upland and the lowland under one management?—Yes.

1599. *Mr. Floyd*: If some of these higher areas were fenced off, is there enough natural water on the hills for there to be no problem, or are you going to be able in most places to pipe water for your own enclosures?—Water in some cases may be a problem, but I have no doubt that can be solved.

1600. There is enough then in the way of springs and brooks for water to be piped over the hills?—I would not like to express an opinion on that, but I should imagine that in most hills there is a valley stream.

1601. Would you advocate shelter belts on the hills are unoccupied, and there is I think we want to make use of shelter belts particularly on the more exposed upland sheep farms.

1602. Supposing these hills were improved and there was a greatly increased head of stock, whether sheep or cattle, would there be sufficient shepherds' houses in the district? Are the cottages now occupied or are they empty?—I am afraid many of the shepherds' houses have fallen down. The small farm units on the hills are unoccupied, and there is less shepherding on the hills than formerly. That in itself is highly unsatisfactory and is leading to rapid deterioration of the pastures consequent upon inadequate shepherding and no proper management of flocks. A man who would set out today to improve his hill land has, however, mechanical transport whereby he can go up and look after his stock and do the shepherding quite efficiently. I think that greater intensity of stocking is more likely to lead to better management of the hill land than obtains at the moment, because the tendency now is to send sheep up to the hill and hope for the best.

1603. Are you thinking, then, of shepherding from land rovers rather than from isolated cottages?—I should not feel inclined to put up cottages in the hills for the sake of putting them up. We have to consider the social life of the individual. The social problem has to be considered together with the agricultural.

I think the two can be integrated. Land rovers and ponies are being used.

1604. *Mr. Morris*: You make the point that individual responsibility is vital for improvement. Does that mean that you are asking for the extension of the in-bye as the first stage towards its improvement? Would not troubles with his fellows arise through an individual commoner seeking what would be generally considered the best parcel of land for improvement, because it was adjacent to his own holding?—Actually I did not make any specific reference to that problem, but the need for emphasising individual responsibility arises out of the problem of technical improvement of the land. There must be individual management, and it is for that reason that I have to say that one cannot improve land and forget about it. To set out upon improving hill land is to set out to improve something that one must continue to follow up and work at for years. The poorer the land the more money must be put into it. To raise production, one must be prepared to put something back in order to maintain improvement.

1605. Is inclosure necessary to this operation?—It is necessary. You will find it is only the minority of farmers who are prepared to face the expense. They would do so because they look to the future for increasing their production. They must however have security of tenure. If they have the opportunity to expend money and improve land, they will do it, knowing they will reap a reasonable reward.

1606. *Mr. Evans*: Would you say most of them do in fact recognise the financial possibilities where they are given means of effective management control?—Yes. You will find quite a lot of work being done where land is under the complete control of the farmer. You will see patches of land improvement on many of the hills in Wales. The farmers have been given encouragement on the technical and financial side by hill farming schemes and a certain sense of security. No developments of this kind can possibly take place on the common lands or where the farming units are widely segregated from one another.

1607. *Professor Stamp*: Would you say then that, as a result of facilities granted at present, there has been a widespread application of your methods by

individual farmers where land is in their full ownership?—I would not say it has been widespread, but I would say appreciable numbers of farmers have embarked upon improvement schemes.

1608. If what you say is true we should be able to distinguish common land by its poor grazing whereas privately owned land under the same natural conditions would now be improved?—Yes, except, of course, with a large bill one cannot set out to do the whole of it in one operation. With a large hill grazing it would not be wise on the part of the farmer to plough the whole of it in one year. It would upset the balance of his farming system. He has to do it in portions and he selects first of all the more convenient and protected areas. He has to fence it himself and of course cost considerations enter into the hill schemes. The process is slow and the whole of the improvable portions of the hill grazing is not going to be ploughed at once.

1609. Suppose someone said that there are still plenty of privately-owned hill lands in Wales which could be improved and there is no need to touch any common land. What is your answer to that?—My answer is that that would restrict the farming system and the opportunities for agricultural development for those farmers who are unfortunate in having their rough grazings in the form of common land.

1610. *Mr. Lubbock*: I appreciate that it may not have fallen within your range of study, but would you say that as a general rule in the commons in this part of the world there are not very many commoners to each common and that it is easier to ascertain who they are?—I think that is probably true for this county. I cannot recall having any real difficulty on that issue when we had to call commoners together.

1611. We are going to hear later this morning a good deal about the breeding of ponies. From your point of view do they have a place in the scheme of grazings?—They did have twenty or thirty years ago when ponies were required in large numbers in coal pits. At that time ponies were kept on the hills the whole of the year. I suppose they helped in some ways to tear up the coarse grass during the winter months; and ponies can do that better than sheep. They certainly can be used—by enclo-

sure, and intensive stocking—as tools for removing rough grass, but their only advantage in helping to remove bracken is that they are more sturdy than sheep and do more damage to the fronds by their feet. Only when there is nothing better to graze will they really give their attention, however, to the rougher parts of the hill. They can also graze more closely than sheep, but I would rather suspect they would first graze the best areas though I have no critical data to support this view. We could use the hills for carrying some ponies but not too many, and we could with benefit utilise cattle in the same way. I should prefer to see mixed grazing of cattle and sheep, but I see no reason why we should not bring in some ponies. When, however, ponies are kept on the hill summer and winter the same general problem of hill land management will arise. Unless you can move your stock down for the winter or sell them before then, there is going to be over-stocking in the winter or under-stocking in the summer.

1612. *Mr. Floyd*: About what time of the year, taking the normal season, would you say that the grass on the hills is ready to carry its full stocking? We talk about summer and winter, but is it not really spring when grasses want most protection?—May, June or July—early June probably. Some growth is made during early May, but I think the maximum is just about now. The spring growth of new swards needs careful management.

1613. Full capacity does not come then before 1st June?—No, I would not like to say it does. If there are ewes and lambs the flock is increasing in size and number; so too are their requirements according to the particular kind of stock carried.

1614. *Professor Stamp*: I think it is clear you would advocate balanced grazing by cattle and sheep. That really is going back to the older use of the Welsh hill farm. Have they become hill sheep farms in response to economic conditions?—Yes. Hill farmers cannot afford to keep cattle for two or three years and are going in more for early maturing cattle. In the old days dairy cattle were summered on the hills and the cows milked and the milk made into butter and cheese.

1615. Do you think there could be such a change of conditions as to render

that balance of cattle and sheep once more economic?—Yes, but not in the same sense as it was formerly. The class of cattle now would be different; possibly a hardy herd of cows rearing cross-bred calves, the latter being weaned and sold in the late autumn. I think that is something which could be valuable and would provide store cattle for fattening in the lowlands.

1616. *Mr. Lubbock*: Professor Jones has been bearing the brunt of all our questions. Have you, Mr. Iorwerth Jones, anything you would like to say to us?

—*Mr. Iorwerth Jones*: I agree with what has been stated all along. I would only add that although under prevailing conditions the poorness of the hill lands at present does not make it worthwhile getting any cattle on them at all, for they would make poor growth, on the improved lands on the hills the cattle thrive. You can get on improved swards on the hills the type of beef that is required to-day by the consumer.

1617. *Professor Stamp*: Can you get baby beef under those range conditions?

—If you define baby beef as something under 18 months, no; but if you mean under two-and-a-half years old, yes. In the old days it was four-and-a-half, five or six years old.

1618. What sort of stocking of cattle is possible under those conditions? We have figures for your improved land for sheep, but no figures for cattle.—I have no figures for cattle alone on the hills. Our figures relate to what was rough grazing until ploughed and improved during the war. It is only 800 ft. above sea level. On that area we are carrying at present for nearly five months in the summer four cattle per six acres—one heast per one-and-a-half acres—as well as two ewes and their lambs to the acre. These cattle vary in age from 12 to 15 months. Whilst I have no data on their actual progress this year, they are certainly thriving.

1619. That is getting very close to something like three-quarters of a stock unit per acre, is it not, at a very rough guess?—Yes. That again was on land like many of our commons which should never have been allowed to remain rough grazing. May I refer to Professor Stamp's earlier question regarding Sir George Stapledon's original survey of the hill lands of Wales, which he then expanded

to the whole of England and Wales, by an ecological classification. Occasionally the management of an area has been so poor that the classification can give no indication of how much it would produce. I do not know the commons of Radnor very well, but I have seen some of them. My experience is that commons as a whole have deteriorated more than the adjoining privately-owned land which is fenced.

1620. Would you generally accept that a good growth of bracken undoubtedly betokens good land?—Yes. In Radnor the growth of bracken is three or

four times as good—and the land would give better crops—than we could get in the county of Cardigan.

1621. *Professor Alun Roberts*: If we go back to Sir George Stapledon's conception, am I right in saying that the majority of the commons here would stand high in his classification, being either bracken land or blue grass moorlands? Would you agree?—I would.

Mr. Lubbock: We have already had glimpses of some of the commons, and we shall be seeing more this afternoon and tomorrow. We are very grateful to you for your comments this morning.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by Col. F. S. Morgan, C.B.E.

THE MORGAN PLAN

Introduction

When Parliament passed the Law of Property Acts of 1922 and 1925, thereby abolishing copyhold tenure and the various 'manorial incidents', the common lands were left as almost the sole relics of the feudal system. In particular the lord of the manor, having cashed-in on the enfranchisement fees, ceased to be interested in the manor as a functional entity: the manor courts fell into disuse, the manor officers were no longer appointed, and the commoners were left to look after themselves and the common as best they could.

Holdings changed hands, methods of agriculture changed, milk replaced beef. attestation meant segregation, labour became dearer—for all these reasons the commons lost their essential place in the economy of many holdings, and at the same time lay open to the encroachments of many persons whom the original manorial system never contemplated. The ownership of the soil passed to all sorts of individuals and corporations, the manorial lands were split up and neglected, and at the present time all sorts of people claim all sorts of rights, or else exercise rights without even claiming them, relying on the prevailing chaos to give them impunity.

The time has evidently come for a clean sweep, to make better use of the wasted acres while at the same time protecting any existing rights which can be shown to be in the national interest. The attached plan is submitted to this end: the plan being for convenience called the 'Morgan Plan', having been originally produced and submitted to the Ministry of Agriculture by the Chairman of the Gower Commoners' Association, Colonel F. S. Morgan, many years ago—and now revived for the consideration of the Royal Commission.

The Morgan Plan in Outline

1. A 'State Land Fund' to be created

The recommendations which follow inevitably involve expense, though it is believed that the original expenditure will prove to be financially sound, besides being socially desirable in many aspects.

2. *All existing common land to be declared 'State Lands', subject to compensation to the present owners*

Precedents already exist for the acquisition of a common land (e.g. by compulsory purchase for national or local government uses). The same standard for compensation could be used.

3. *All rights of common (pasture, estover, turbary, piscary etc.) to cease on the Appointed Day*

The Appointed Day would be at a definite period after the passing of the necessary legislation—allowing for the time necessary to carry out the Register and Survey mentioned below (Para. 5). It is considered that, in practice, only the right of pasture need be retained after the Appointed Day.

4. *A Register of commoners to be compiled*

This is essential, to establish the effective demand on the commons. The onus of proof should be on claimants to rights of common, and a time limit (e.g. six months before the Appointed Day) should be laid down.

In view of the confusion mentioned in the Introduction, and the difficulties of proving these rights in many cases, the period required for prescriptive rights should be reduced to 20 years or even less.

Non-users of provable rights present a problem, as the existence of such rights on the Register might lead to under-pasturage and consequent deterioration of the land. Nevertheless, such persons should have the right to Register.

A registration fee should be charged, if only to discourage insubstantial and speculative claims. The fee should also be chargeable on change of occupier (whether owner or tenant), to ensure that the right is associated with the land and not with the individual.

5. *A Survey of the State Lands to be made*

The object of the Survey would be to record and classify the lands coming into State ownership under para. 2, classifying it according to soil type, present use (i.e. the amount and type of stocking), suitability for improvement (drainage etc.) and potential uses.

Potential mineral developments, suitability for forestry or for industrial developments or special 'amenity' values (which need not conflict with agricultural use) should also be included in the Survey.

6. *The overall administration of the State Lands to be given to the Agricultural Land Commission (in Wales, the Agricultural Land Sub-Commission)*

There appears to be no need to create an ad hoc body, as the Agricultural Land Commission has already considerable experience in land ownership and administration. For the purposes of these proposals, it would draw on the State Land Fund (para. 1).

7. *The State Lands to be divided into local commons*

To some extent, these commons would be identical with existing commons; but present manorial boundaries should be ignored and the new commons be defined according to requirements.

Local commons to be under the routine management of local 'Commons Managers', partly elected by registered commoners and partly nominated by the Agricultural Land Commission.

The Commons Managers would come into operation by the Appointed Day; i.e. at the stage indicated in para. 8 (a) below. These Managers to be unpaid, but to have power to appoint haywards or bailiffs for the common or commons under their management: and to carry out such duties and incur such expenditure as may be delegated to them by the Agricultural Land Commission.

In particular, the Commons Managers should have power to prevent the use of the commons by unauthorised persons or animals, such as unlicensed pony stallions, bulls or rams.

8. *Allotments of the State Lands and local commons*

After completion of the Survey and Register, which would proceed simultaneously, and the division of the State Lands into suitable geographical groups, the Land Commission should proceed to assess requirements and make allocations on the following principles:—

- (a) The first claim shall be for pasturage by registered commoners, the amount and type of stock to be pastured being proportionate to size and nature of the holdings concerned, and the right being embodied—with effect from the Appointed Day—in licences to pasture, issued by the Commons Managers, and reviewed periodically to meet changes in size or use of the holdings in connection with which the licences are issued.
- (b) New commoners may be admitted to the Register, subject to the availability of pasturage, on the recommendation of the Commons Managers.
- (c) When claims under (a) and (b) have been met, the Land Commission shall have power to enclose any of the State Lands for any of the following purposes:—
 - (i) For the winning of minerals, under licence.
 - (ii) To create new agricultural holdings, which shall be let but not sold. Such holdings may be given rights of pasturage on the unenclosed common.
 - (iii) For the improvement (e.g. drainage or liming) with a view to subsequent use as a common pasturage or new holdings.
 - (iv) For the prevention of straying.
 - (v) For forestry.
 - (vi) For urban or industrial development, where such development would otherwise use land of greater agricultural or amenity value.
 - (vii) For amenities—where such amenity requirements are not already adequately met.

Examination of Witness

COL. F. S. MORGAN, C.B.E., E.R.D., D.L., J.P.

Called and Examined

1622. *Mr. Lubbock*: We are grateful to you, Colonel Morgan, for coming to expound your views to us today. We have all read your very interesting paper and would like to ask you some questions on it.

You start with the assumption that a land fund must be created. Would you regard that as a charge on State funds, or local government funds, or what?

—*Colonel Morgan*: I have suggested that, once it is produced, it will be a 'rolling' fund, more or less self-supporting. How it should be arrived at in the first place is beyond my competence to advise.

1623. You then say that, in your view, existing common land should be declared 'State Land'. Why do you feel that is necessary?—At the present moment, as I think I have indicated, the legal ownership of common lands—I speak

chiefly of the low lands in South Wales—has fallen into so many different hands that there is no effective control of them. The legal owners of large numbers of these commons take no interest whatever in them and I feel that ownership should be centralised, so that some form of order can be introduced into what is now chaos. This fragmentation has developed historically. For instance, in my particular area, what was a manor of perhaps 10,000 acres is now split among about twenty owners.

1624. Are there not other places where there are very active lords?—I know of cases where the manor is still a functioning body.

1625. *Sir Donald Scott*: How did it come about that a very large manor was split up in so many different parts?—The manorial rights were sold, I think.

for death duty purposes, and bought by a private individual as a speculation. He gave away one portion to one public corporation and another to another corporation. He sold bits of the manor to various individuals, and the whole thing was chopped up into penny packets. Then, of course, in 1926, the copyhold was enfranchised. The manor was originally bought in 1920 and I think the distribution took place roughly during the last war.

1626. *Sir George Pepler*: Although the owner distributed the land did not the common rights remain?—While it is true he merely distributed the land and local common rights remain, nobody takes any interest from the manorial point of view.

1627. *Professor Stamp*: Would you say, therefore, that the rights of the lord of the manor are worth very little?—Other than potential mineral rights I should say practically nothing. Yet people are still buying them as a speculation. In some cases they are interested in acquiring any papers and so on which go with the manor and they would like to buy the title.

1628. Regarding paragraph 2 of your memorandum, do you not think that the purchase by the State or some other authority of the rights of the lords of the manor would be a very big matter of compensation?—I should say, no, a slight matter. There are cases when common land is acquired by compulsory purchase for various public purposes, such as water undertakings, and the compensation figure is very low.

1629. But would not the compensation figure for commoners be a much more serious matter?—Commoners have never yet been compensated in the case of acquisition by public authorities because the latter have only acquired small portions. It has not been worth the commoners' while to fight.

1630. *Dr. Hoskins*: Might it be more difficult to trace the existing lords of manors than it is to trace commoners? If so, would you apply your time bar, which, I think you suggest, should be six months for commoners, to lords of the manor as well?—Undoubtedly. They are so much fewer that I think there would be no difficulty. It should be possible to trace claims to the lordships without any difficulty at all.

1631. Are there not cases where a commoner may be quite unknown at present?—There may be, but not in my part of the world.

1632. *Mr. Floyd*: Do you consider that the most useful function of the lord of the manor under the old system was that he was a local man living on the place who knew the common and the commoners?—Yes.

1633. The 1925 Law of Property Act, which abolished his normal copyhold rights, divorced his interests from the common. Would ownership by the State, as you suggested, fulfil that function which the lord used to have of producing the local knowledge for the local guidance of commoners?—I think so, very definitely. The committee of the commoners will have local knowledge and presumably the State, through its local agricultural organisation, will be able to fulfil the function previously carried out by the lord of the manor.

1634. Do you suggest that somebody from the agricultural committee, for instance, should fulfil the function which used to be fulfilled by the lord of the manor?—I have suggested the Agricultural Land Commission, not the Agricultural Executive Committee, but it should definitely be a public servant.

1635. *Mr. Lubbock*: Have you any views about how the register of commons which you propose is to be made exhaustive and how the survey is to be carried out?—I would suggest that the simplest way is to ask for claims, investigate and register them.

1636. Do you think six months would be enough for that?—As a tentative figure. I am not wedded to six months.

1637. Do you also suggest that the period required for prescriptive rights should be reduced to twenty years?—Yes, purely as a matter of evidential convenience.

1638. *Professor Alun Roberts*: Looking at the matter from the point of view of loss of benefit to the commoners at large through the splintering of the lordship of the manor and it thereby becoming more or less impersonal, is there loss to the active commoners today through their being unable to recover land use if they voluntarily hand together in a commoners' association?—The voluntary organisation of

commoners has not got the status to enforce action against trespassers. One part of South Wales is suffering very badly through this. No voluntary association of commoners has any right to proceed against trespassers, whereas the lord of the manor had.

1639. In that instance, and in others, can you envisage a voluntary association of commoners retrieving what is lost through the splintering of the lordship?—No, not unless they are given some status, and that can only be done through legislation.

1640. *Mr. Lubbock*: You suggest that after registration the commons should be under the management of local commons managers, that is a committee with statutory powers. It would, you say, be partly elected by registered commoners and partly nominated by the Agricultural Land Commission. What sort of people do you envisage the Agricultural Land Commission appointing?—I would expect them to appoint the chairman of the commons managers and a secretary. The rest of the body should be drawn from people who are in fact now commoners and would be personally interested in the good management of the common land. My suggestion is based on the well-known principle that the man who produces the money is going to insist on a certain measure of control.

1641. *Professor Stamp*: Is there a certain incompatibility in your proposals? Under paragraph 2 you arrange for the common land to become State land subject to compensation to the owner. Under paragraph 3 you say that all rights of common should cease on the appointed day. In other words, commoners would cease to exist on the appointed day. But later on, under paragraph 7, do you not give the commoners an important place? If you are going to eliminate the lord of the manor and rights of common should you not compensate the commoners and start with a fresh body altogether?—I have said in paragraph 3 that the only common right that need be retained is the right of pasture. There are a number of complicated rights—turbary and so on—which I have mentioned, which I think are historic rather than economic.

1642. Are you really then eliminating the lords of the manor by making the

State the owner of common land while perpetuating the common land system? Is not the net result to exchange the lord of the manor for the Agricultural Land Commission?—For as much of the land as may be retained as commons, yes. I am converting commoners into licensees.

1643. *Mr. Lubbock*: That takes us on to paragraph 8, where you agree the first claim on the common lands should be for pasturage by registered commoners, that is existing commoners. You say the amount and type of stock to be pastured should be proportionate to the size and nature of the holdings concerned, or stinted. Are the commons managers going to issue licences to pasture?—Yes.

1644. Do you regard that as final? After they have seen that a farmer has the right to put so many beasts on the commons, will that remain in perpetuity?—I think so, subject as I think I have suggested to periodical review every five years to meet any changes in conditions of the agricultural holdings.

1645. Next you say that new commoners may be admitted to the register. By that do you mean that the number of commoners can be increased?—I think so. I also suggest that the unwanted portions of existing commons can be cut into new holdings. For instance, in my part of the world, which is Gower, near Swansea, something like 40 per cent of the downland area is common land. That is all below the 600 ft. level. The result of certain tests we have made shows that half of that 40 per cent. is absolutely first class land. It is completely comparable to the inclosed land adjoining. I agree with the last witness, Professor E. T. Jones. We have conducted operations for improving portions of the land—ploughing, liming, fertilising and reseeded—and its carrying capacity is quite as good as any of the inclosed land in the area, possibly better. That was not done under war-time requisition but experimentally through the commoners' association. We found the money and did the job just to see what happened. All the stock congregated on the improved area for three years and when I looked for the improved area yesterday I could not identify it.

1646. *Mrs. Paton*: You say 40 per cent. of the downland is common land. Are all the commoners known?—No,

because in my part of the world rights of inter-common are very complicated. People from the mining valleys have to come 40 miles to use a particular common, which they very rarely do.

1647. *Mr. Lubbock*: That takes us back to the question of the initial registration of commoners. Would you say that there might be some commoners who should be compulsorily bought out at that stage?—I have not said that. What I have said is that the onus of proving rights to commons should be on the applicants.

1648. What though, if, as you just said, the commoner lives 40 miles away?—You register him, charge him an annual fee for a thing he never uses, and he then withdraws his claim. That is where the registration fee comes in.

1649. *Professor Stamp*: In your view the rights of the lord of the manor are not worth very much. We have had other evidence that they are not worth very much because there is very little that the lord of the manor has a legal right to do. He cannot plant trees, he cannot enclose, and so on. Would it not be very much simpler to eject the commoners, compensate them and then leave the lord of the manor to manage the land properly?—Yes, if you can compel the lord of the manor to manage his land properly. Often where it is a corporate body they just will not do so.

1650. *Professor Alun Roberts*: If the land is of such potential as you indicate, why not carve it up and give the freehold to individual owners allowing them to make full use of the land?—From a purely agricultural point of view that is obviously a logical solution and to that extent I am bound to agree with you. I was thinking also of public access and various other difficulties, not of economics.

1651. *Sir George Pepler*: Have you a very large population in the Gower?—Eleven thousand only, but there are one hundred and sixty thousand in Swansea.

1652. *Mrs. Paton*: The commons would be used, would they not, for public access quite a lot?—To a certain extent they are, but not as much as you might think. Cliff lands in Gower round the coast are very much used for public access. From the point of view of a national park, or of Swansea's first green belt in which we are about to be included, there is no question that properly enclosed grazing land looks

better as an amenity than some of the rubbish that is now being allowed to grow. There would be very serious objection, however, to total abolition of the commons by inclosing the lot, although agriculturally that is the right answer.

1653. *Professor Stamp*: We have been told in a somewhat similar area the present custom is for townspeople to drive through the commons because they want to get to the coast. Provided they have legal public access guaranteed to attractive coastal lands they are not really interested in commons in the heart of the country or, in your case, in the heart of Gower. Would you agree?—In Gower the actual commons up to about two or three hundred yards from the main roads are used by the public for picnicking. They are also being used for riding, to an increasing extent.

1654. What has been called 'perimeter picnicking'.—That is a beautiful phrase. I entirely agree. I think from the amenity point of view it would be a pity to inclose right up to the main road. I would like to save a hundred yards as open space each side of it to be available for stock grazing but also open to the public.

1655. *Mr. Floyd*: Would you in fact graze it if it was not fenced?—At the present moment 'rights' are equally shared by cattle, sheep and motors without any difficulty. Sheep prefer to graze the strip immediately adjoining the high road because of limestone dust which improves the grazing.

1656. *Professor Alun Roberts*: Do you have many stock losses after dark?—Very few.

1657. How was land inclosed in Gower in the late 18th and early 19th centuries, by private bill or under some general enactment?—I do not think that except for the recent Swansea Corporation Act which incloses 276 acres there has been any statutory inclosure in Gower for two or three hundred years. That is why we still have a high proportion of common land.

1658. *Dr. Hoskins*: Is there any historic reason why there should have been such an unusually high proportion of good common land left in Gower?—I think the historic reason is that at least until the first World War manors largely continued to function and the commons fitted into our system of agriculture at that time, which was largely

sheep and beef. The whole of Gower was under the single seignory of the Duke of Beaufort. Strays were rounded up and impounded and the commons were properly controlled up to about 1925.

1659. But, in many parts of England, even with a functioning manorial organisation, commons were nevertheless inclosed, were they not, by Act of Parliament?—Some credit must be given to the nature of the inhabitants of Gower who have always been extremely resistant to pressure.

1660. *Mrs. Paton*: Have there never been any attempts to inclose in Gower?—I do not think there are any records of any attempt at inclosure other than in little packets. There has never been any large scale inclosure attempted to my knowledge.

1661. *Mr. Lubbock*: Your plan applies to commons of the type that exist in your part of the world. There are many other types of commons in other parts of England and particularly near London. Do you think that the same provisions should apply?—It all depends on the existing user. A lot of the commons near London are hardly used at all for grazing. Nobody is interested in grazing them, and it is not a practical proposition because of traffic and so on. I am thinking, for example, of Hayes Common. In that case commoners would not be interested, as with industrialisation they have really lost their rights. I think, however, the same principle should apply as to ownership and management.

1662. Where would funds for management come from?—If the State comes to the conclusion that any particular common which it has taken over near London has ceased to be of any agricultural value, it should be handed over to the corporation as a public park to be maintained by them. This cannot be done if the legal ownership is in a lord of the manor.

1663. If the Agricultural Land Commission were abolished, would you wish the Ministry of Agriculture to take on direct responsibility for your scheme?—I am told by the Ministry of Agriculture there are half-a-million acres of common land in Wales, most of it, I believe, working to one-tenth of its potential. That justifies the setting up of a special department if necessary.

There is another point I would like to raise, that is, at the present moment—again I am quoting South Wales, the Port Talbot area—when 600 acres of land were wanted for building, 600 acres of first class agricultural land were taken. There was adjoining that, and still is, 1,600 acres of waste land highly suitable for building which could not be touched because it is common, yet it is completely useless and sanded over—that is the Kenfig Burrows area. That is one further reason why commons should be taken under control.

1664. *Professor Alun Roberts*: West of Port Talbot, is considerable use—but not full use—made of hay meadows for farms at the back of the abbey?—Yes.

1665. *Professor Stamp*: Is there not a weakness in your scheme that if the commoners had been registered and their rights definitely recorded, that would have crystallised the position for them and have made it impossible to use that land for building?—I think it would have to be proved the land was of no value to the commoners in that particular area.

1666. But because you would have given commoners legal rights as it were for ever you would have made it even more difficult, would you not, to secure such land as you need for building purposes?—We should be no worse off than we are now: and my suggested five-year review would operate.

1667. *Mr. Lubbock*: You list the various purposes for which commons might be used apart from agriculture, urban or industrial development being one of them, but you say these purposes should have effect only when the requirement for common pasture and for the creation of new agricultural holdings had been met. Conditions however would change. It might be the commons managers would wish to allot some of their land for building. Would that have to be referred to the Agricultural Land Commission?—Yes. I cannot envisage the commons managers being willing to give up their commons if they were properly organised on the basis of my scheme. But such a change could certainly be allowed under the five-year review if the land was no longer required for food production. I cannot see it happening, but provision should be made for it.

Mr. Lubbock: Thank you very much.

(The witness withdrew.)

Memorandum of Evidence Submitted by The Welsh Pony and Cob Society

The announcement that Her Majesty's Government had appointed a Royal Commission to enquire into the law relating to common land was welcomed by the Welsh Pony and Cob Society, as it had long been felt that there were many anomalies in the administration of such lands in the light of modern agricultural needs.

As a Breed Society however, our interest lies only insofar as changes envisaged in the law relating to common land may have a detrimental effect on the breeding of Welsh Mountain Ponies on such areas in Wales. Over the past fifty years the Society has succeeded in establishing some twenty Pony Improvement Societies on common land and hill areas in Wales (see Appendix attached), whose members have adopted the provisions of the Commons Act of 1908. This policy of improvement has undoubtedly resulted in the numerical superiority of the Welsh Mountain Breed over all other native breeds of ponies in Great Britain, and the prosperity and popularity now enjoyed by the Breed in many overseas countries (in 1955 alone Welsh Mountain Ponies were exported to the U.S.A. to the value of £20,000 and there are indications that the trade is increasing). The members of Pony Improvement Societies (so far as can be ascertained) all have common rights and their normal farming policy is closely linked with the facilities for grazing stock on common land. Any attempt, therefore, to remove or even to restrict such rights would perforce unbalance the economy of many marginal and hill farms in Wales.

The Society's Position: The case we have to present is, therefore, one of the protection of existing rights rather than to suggest any major changes in the law. Whilst the Pony Improvement Societies whom we seek to represent do not embrace all the common land areas which have feral herds of Welsh Mountain Ponies, we would nevertheless wish to include all such areas in our submissions.

Views of Pony Improvement Societies: Since the announcement that a Royal Commission was to be appointed, the Society's Council through its Editing Committee has held meetings of representatives of Pony Improvement Societies in order to obtain their views and the following are the general conclusions obtained:—

1. That the breeding of Welsh Mountain Ponies on the 'berd' system on common land is an integral part of the economy of hill and marginal farms and smallholdings in Wales.
2. That the breeding of Welsh Mountain Ponies would be seriously affected if common rights were withdrawn as it is an established fact that in order to maintain the purity and hereditary characteristics of the breed, the breeder must have recourse to the mountain herds for fresh blood from time to time. The importance of this is further stressed and recognised by the grants made from the funds of the Racecourse Betting Control Board for the provision of premiums for Welsh Mountain Pony Stallions to roam the common land and hill areas of Wales. (See Appendix attached.)
3. That the grazing of Welsh Mountain Ponies on rough hill areas has a beneficial effect of keeping down the growth of bracken. (There is ample evidence to show that the grazing of ponies and sheep on rough hill areas can be complementary. Several commoners have testified that the removal of ponies from a particular hill results in a reduction in its sheep carrying capacity.)

Subsidiary Considerations: In considering the case for Welsh Mountain Ponies, several subsidiary matters were brought to our notice which may be of some assistance to the Commission in its deliberations, viz.:—

1. The problem of 'backyarders' using common land. This is particularly prevalent in the valleys of South Wales where the owners of single ponies turn them out on common land. It is felt that this practice should be discouraged.

2. The erection of grids on common land areas. Several local authorities have taken this matter in hand and have erected grids on access roads to common land. In many areas, however, many of the commons are unprotected by grids, which results in stock straying on to the main highways.
3. Encroachment by the War Department. For this we cite the case of the Eppynt Hills, where a large area of the common has been requisitioned by the Western Command for use as an artillery range. Further encroachment would be disastrous to the commoners using the existing land.
4. The problem of 'scrub' stallions on common land. In areas where the commoners have adopted the provisions of the Commons Act of 1908, there is some measure of control by the removal of 'scrub' stallions under the powers granted. In several other areas, however, 'scrub' stallions are allowed to roam without any control and if allowed to continue will most certainly be detrimental to the breed.
5. The establishment of common rights by precedent or by undisputed occupation for several years.

Conclusions

1. That the existing rights of commoners to graze ponies on common land be protected.
2. That the law relating to the licensing of stallions (Horse Breeding Acts, 1918 and 1948) be extended to include stallions on free range.
3. That established societies who have as their object the improvement of Welsh Mountain Ponies be allowed to rent or lease common land for this purpose.
4. That the 'Morgan' Plan (submitted to the Commission by Col. F. S. Morgan) might well be a workable method of controlling the commons, providing it does not cut across pony and sheep interests.

Appendix

Specimen Premium Scheme

WELSH MOUNTAIN PONY STALLIONS

RACECOURSE BETTING CONTROL BOARD PREMIUMS—1956

Conditions and Regulations under which Racecourse Betting Control Board Premiums will be awarded for Welsh Mountain Pony Stallions in 1956

Premiums:

The Racecourse Betting Control Board through the National Pony Society has made the following grants for the provision of premiums for *Registered* Welsh Mountain Pony Stallions.

	Amount	No. of Premiums
	£ s. d.	
To Hope Bowdler Hill	15 0 0	1
To the Church Stretton (Longmynd) ...	15 0 0	1
To the Eppynt Hills... ..	107 10 0	10
To the Black Mountains (Eastern Section)	87 10 0	8
To Vaynor & Pontsarn	37 10 0	3
To the Gower Commons	37 10 0	3
To Denbigh Moors	27 10 0	2
To the Penderyn P.I.S.	47 10 0	4
To the Aberyscir Hill Pony Society ...	15 0 0	1
To the Llanafan & Llanwrthyl P.I.S. ...	47 10 0	4
To the Aber Hills, Bangor	15 0 0	1
To the Llandefalle Hill Society	27 10 0	2
Carried forward	480 0 0	40

	Amount	No. of Premiums
	£ s. d.	
Brought forward ...	480 0 0	40
To the Hill Area on Brecon Beacons ...	27 10 0	2
To the Dowlais & Tynrodyn P.I.S. ...	47 10 0	4
To the Ebbw Vale P.I.S. ...	27 10 0	2
To the Elan Valley P.I.S. ...	37 10 0	3
To the Beggins Hill (Radnorshire) P.I.S. ...	15 0 0	1
To the Manmoel P.I.S. ...	15 0 0	1
To the Black Mountains (Cefnbryn) (Brynamman & District Pony Society) ...	15 0 0	1
Total ...	£665 0 0	based on 54 Premiums

The manner in which each grant shall be apportioned in premiums shall be decided upon by the judges appointed to make the awards

The Judges may withhold or reduce the amount of the grant made to any Society or Association if, in their opinion, such action is warranted either by paucity of entries or lack of merit in the Stallions submitted for inspection by that Society or Association and they may recommend that any grant or part thereof so withheld be applied to the provision of additional or augmented premiums in the event of the Stallions submitted for inspection by another Society or Association being sufficient in number and merit to justify the award of additional or augmented premiums.

Condition and Regulations:

1. The provisions of the Commons Act relating to the exclusion of undesirable sires must be in operation, and enforced, in the territory governed by the Society or Association to which a grant is made.

2. A Stallion is not eligible to take a premium for the same district on more than three occasions in succession.

3. Premiums will only be awarded to Stallions which, in the opinion of the Judges, are of sufficient merit.

4. A Stallion to which a premium is awarded shall not be withheld from the hill or common to which he is allotted except upon production of a Veterinary Surgeon's certificate to the effect that he is unfit for service.

5. The Premiums will be awarded by Judges to be selected from the Panel of Judges of the Welsh Pony and Cob Society (which will defray the Judges' expenses) at inspection parades to be held at times and places of which applicants for premiums will be notified by the Secretaries to the Societies or Associations concerned, and the awards will be subject to confirmation by a representative of the Racecourse Betting Control Board.

PREMIUMS will only be awarded to Stallions registered in the Welsh Stud Book. (To be 'eligible for registration' will not be accepted as a qualification.)

6. Entries for the inspection parades must be made as follows:—

In the case of Hope Bowdler Hill—Mr. C. W. Preece, Hope Bowdler Farm, Church Stretton, Salop.

In the case of the Church Stretton (Longmynd Hills)—Mr. T. Andrew, Kenford, Church Stretton.

In the case of the Black Mountains (Eastern Section)—Mr. Emrys Griffiths, The Revel, Talgarth, Breconshire.

In the case of the Epynt Hills—Mr. W. Davies, Llanfechan, Garth, Llangammarch Wells.

In the case of the Vaynor & Pontsarn Agricultural Improvement Society—Mr. Cromwell Davies, c/o the Pontsarn Hotel, Pontsarn, Merthyr Tydfil.

- In the case of the Gower Commoners' Association*—Mr. R. W. H. Jenkins, Kilvrough Park, Parkmill, Swansea.
- In the case of Denbigh Moors*—Miss M. Brodrick, Plas Llewellyn, Abergale.
- In the case of the Penderyn P.I.S.*—Mr. G. Davies, Wernlas Farm, Penderyn, Nr. Aberdare, Glamorgan.
- In the case of the Aberyscir Hill Pony Society*—Mr. G. J. Owen, Rhiwgoch, Llan-Nant-Bran, Sennybridge, Brecon.
- In the case of the Llanafan & Llanwrthyl P.I.S.*—Mr. T. Wilding-Davies, Fayre Oaks Stud Farm, Hereford.
- In the case of the Aber Hill P.I.S.*—Mr. Owen Ellis, Tynhendre, Talybont, Bangor, Caerns.
- In the case of the Llandeufall Hill Society*—Mr. E. D. Owens, Wernddyfwg, Felinfach, Nr. Brecon.
- In the case of Hill Area on Brecon Beacons*—Mr. Baden Powell, Penstar, Libanus, Brecon.
- In the case of the Dowlais & Twynrodyn P.I.S.*—Mr. R. G. King, 6 Greenfield Terrace, Penydarren, Merthyr Tydfil, Glam.
- In the case of the Ebbw Vale & District P.I.S.*—Mr. T. Morgan, 5 Victoria Road, Ebbw Vale.
- In the case of the Elan Valley P.I.S.*—Mr. J. R. Jones, Barclays Bank, West Street, Rhayader, Rads.
- In the case of the Beggins Hill (Radnorshire) P.I.S.*—Mr. T. Williams, Scalding, Llyswn, Brecon.
- In the case of the Manmoel & District P.I.S.*—Mr. Mostyn Isaac, Pentregroes Farm, Croespenmaen, Nr. Crumlin, Mon.
- In the case of the Brynamman & District Pony Society (Black Mountains—Cefnbryn)*—Mr. D. W. Thomas, Cwntrubitt, Brynamman, Nr. Ammanford.

A Society or Association may refuse to accept an entry if they have good reason for doing so.

7. PREMIUMS will be paid after the close of the service season to the owners of the Stallions which fulfil the foregoing conditions, provided that:—

- (a) Each Stallion roams on the hill or common from 1st May to 1st August, 1956, in the district prescribed by the Society or Association concerned.
- (b) A certificate, signed by the Secretary to the Society or Association on or after 1st August, 1956, to the effect that condition (a) has been complied with, is forwarded to the Secretary to the Welsh Pony and Cob Society.

8. In any case of dispute, the decision thereof shall rest with the Welsh Pony and Cob Society, subject to confirmation by the Racecourse Betting Control Board.

(Signed) J. A. GEORGE,

Secretary.

WELSH PONY AND COB SOCIETY.

Examination of Witnesses

MR. J. J. BORTHWICK, DR. ARWYN WILLIAMS, MR. T. WILDING-DAVIES, and MR. J. A. GEORGE, on behalf of the Welsh Pony and Cob Society,

Called and Examined

1668. *Mr. Lubbock*: We have read your very interesting paper on the present pony situation and we would like to ask you some questions on it. At the beginning of your paper, you say there

are some 20 pony improvement societies in Wales and that ponies were exported to the U.S.A. last year to the value of £20,000. Is that export evenly spread over the pony societies in the country?

—*Mr. Borthwick*: Yes, I think it is perfectly fair to say that it is spread over the principality. Some of our ponies spread into England, of course, but taking it by and large I think the buyers from the United States and other countries go all over the principality in their selection.

1669. *Mr. Floyd*: What number of ponies exported would that £20,000 represent?—We can check that because we had to give export certificates. One hundred and forty export certificates were issued.

1670. *Mr. Lubbock*: Is the natural production of ponies equal to keeping up that volume of export?—It is that consideration which underlines the importance to us of the hill or common land. The bands of ponies that graze there are our foundation stock. It is important to us to maintain that stock, and its constitution. Taking it by and large, production—the basic breeds of brood mares—is maintained up to the export requirements.

1671. *Professor Stamp*: What do you mean by your use of the word 'feral' in the second paragraph?—'Taking the herds of ponies by and large on the hills, they tend to sort themselves out according to their own particular stallion. He makes, as it were, his own set of requirements. Take one of our hills, shall we say, the Eppynt Hill, where we may have six or eight stallions. They sort themselves out into their own particular branches, each to a particular stallion.'

1672. The word is usually used to imply a domestic animal that has gone wild and naturalised itself, but you allow these ponies to behave as herds of wild animals and to make their own choice?—To a very great extent that is so.

1673. What you really want is certain open hill land, is it not, but not necessarily common land?—Most of our open hill land in Wales is common land, is it not?

1674. That is a very big assertion, and I am not sure how correct it is. Provided you have sufficient open land for your herds to run, does it matter whether it is common land or not?—It is not necessary for it to be common land.

1675. In fact would it not be far better for your particular societies to carry out what they are doing on open hill land, privately-owned?—No, because they

would not get the varying quality of pony on privately-owned hill. It would rather defeat our aim.

1676. *Professor Alun Roberts*: Am I correct in assuming that you want a certain type of hybrid vigour in your foundation stock, an animal nearest the wild, which you can only best preserve by having a multiplicity of individual owners using common grazings?—Yes.

1677. *Mr. Lubbock*: In the paper you speak of 'backyarders' using common land. Would you tell us what precisely you mean by that?—With every respect to the good people to whom we refer, there are some, particularly in South Wales, who have acquired bits of land near the common and who own perhaps one or two ponies. They perhaps indeed own no land at all but are interested in ponies and are inclined to turn theirs out on to the common. Those are the people who are termed 'hackyarders': perhaps it is a misnomer.

1678. But do they not contribute to the diversity?—It is a bit too diverse when you get 30 or 40 individuals owning one mare.

1679. *Professor Stamp*: Have they in fact any legal right if they are not commoners?—They have no legal right at all.

1680. *Mr. Lubbock*: You speak of the areas where the commoners have adopted the provisions of the Commons Act of 1908. To how many commons would that apply?—It would be safe to say that about 12 societies are concerned.

1681. In your recommendations you suggest that the law relating to the licensing of stallions under the Horse Breeding Act, 1918, and the Animals Act, 1943, be extended to include stallions on free range. Would that in fact be practicable? Could it be supervised?—We think so. That is one of the most important points that we commit to your consideration. We are being defeated to a very great extent by the fact that there are 'scrub', nondescript stallions roaming unlicensed on the commons and the hills. There are so many loopholes in the present Acts. Take any one of our societies which are administering our scheme for us—they do their best to clear their hill of 'scrub' stallions, but they have no status to demand that any stallion which is roaming should be licensed. Unfortunately our

stallions do not have to be licensed, for if they go out on the hills they are excluded from licensing. What we want is that every horse and pony should be subject to licence at two years old. Then we can control them. Looked at from the national economy point of view we submit it is the right thing to do. It is hopeless to make use of these stallions.

1682. If you had the law behind you would you be able to see to its enforcement?—Yes, on every common and every hill on which we are making grants. It would give us a status.

1683. *Professor Stamp*: A townsman visiting a common has probably been told that a Welsh stallion is a very dangerous animal. Is that correct?—As far as humans are concerned, no. I have never known a Welsh mountain stallion to be dangerous, though he might perhaps look a little cross if one went near his hand at a particular time. I have not heard of any trouble of that sort.

1684. Is there anything incompatible between your suggestions and public access to commons?—No. In fact from our point of view we welcome public access. The public would come to admire our ponies.

1685. *Mr. Lubbock*: Would you also like to be allowed to rent or lease common land for the ranging of the animals?—Our point on that is that there are certain groups—three or four at least, perhaps five—who have formed themselves into societies. They have no common rights, and are not commoners in the accepted term, but they own, some of them, 50 or 60 mares. They have been turning the mares out on the hills, and we have been supplying them with stallions. Legally the mares have no right there. We and the societies want to establish a right. Some have been trying for years to get an acknowledged right to give them status but it has not been forthcoming. We would ask that these established societies may be treated in the same way and given the same rights as the commoners, having regard always of course to the animals, that is, to the weight of grazing on a particular ground.

1686. You do not so much want to be able to rent the land of a particular common as to be able to hire the right to graze so many animals?—I do not want to pay a penny if I can help it, but I want that right.

1687. *Mr. Floyd*: Would you not be prepared to hire so many stints for the year to put so many ponies out?—I am inclined to say no to that. Naturally it depends on circumstances.

1688. Do you employ any people who, I think, in the New Forest, are called agisters?—We do not do so in the same way. We have the organised improvement societies which give us any information asked for. We meet them once a year at a conference. We get their statistics, the number of ponies, and generally look after their welfare.

1689. Do you get many losses annually through motor car accidents? In the whole of Wales, how many ponies would be killed on the roads?—There are certain cases where ponies stray on to main roads and there have been accidents. I cannot tell you the numbers, but it is not anything like the New Forest.

1690. *Dr. Hoskins*: Are you troubled by holiday visitors feeding ponies? On Dartmoor it is a cause of accidents.—I have not heard of it.

1691. *Mr. Evans*: Would the wholesale fencing of common land into separate plots have a very serious effect on your society?—It could have; in some cases it might be an improvement because it might make it possible to enclose perhaps sufficient land for, say, 30 or 40 pony mares and a particular stallion could be put among them. I might help us then to be more certain about the individual breeding than are at the present time.

1692. *Professor Stamp*: In s paragraph 3 of your paragraph on views of pony improvement societies, you refer to the grazing of ponies and sheep as being complementary. Is there any incompatibility with putting more cattle on? Would that interfere with pony breeding?—No. You may know of the incursion of bracken on the Welsh hills. I do not happen to be a Welshman, but I have always been told that with a weight of ponies on the hills there is practically no bracken. They keep it down. With the demand for pit ponies, etc., disappearing and the weight of their grazing decreasing, bracken has grown up. Our argument is that the grazing of ponies helps to improve herbage and grazing for sheep and cattle. They will trample out young bracken.

1693. The same applies to cattle. The heavier treading causes damage to the bracken. You would not then object to the further development of cattle-keeping on the hills?—No.

1694. Some of the evidence this morning from the Welsh Plant Breeding Station described the possibility of improving rough pastures. Would that be detrimental to your interests or not?—It would be beneficial.

1695. Do you think the animals would simply go for the best grass?—No. If you follow ponies around I think you would find them going off to graze, as do cattle, to the hedge sides to find their own material.

1696. I notice all the way through you refer to commoners. Do the lords of the manor take any interest in your societies?—As far as we know, none. I would not say no lord of the manor owns any ponies, but as far as I know they do not.

1697. I thought they would be leaders of your societies.—I regret to say they are not.

1698. *Mr. Lubbock*: You speak of encroachment by the War Department. Where land is taken over is it mainly for artillery ranges on the hills? Is the land taken over sterilised or does the War Department allow normal pasturage except at actual times of firing?—As far as Eppynt is concerned they actually took over half of the hill. The ponies on that particular section had to be disposed of.

We do not know for certain but there are rumours that they are thinking of extending that artillery range, and from our point of view it would be seriously detrimental. Perhaps we have no right to say to the War Office that they should stay where they are. But we do not want to lose any more of Eppynt Hill if we can help it, and we want you to help us to retain it.

1699. *Professor Stamp*: Elsewhere it has, I believe, been suggested that although common land is used as an artillery range farmers are allowed to continue to graze their sheep or animals on the land concerned.—If you had seen the results of that happening as far as ponies are concerned, you would not wish to put any ponies out.

1700. *Mr. Lubbock*: Are there distinct types of pony bred on different hills?—You will always find that, I think. It arises from the choice of stallions years ago and perhaps the choice of mares—the type of mare I want compared with what my friend here might want. One established those types on one's particular area, for example, on the Eppynt Hill.

1701. *Mr. Floyd*: Do the ponies get any hay taken up in the winter during snow?—We are reasonably kind to them.

1702. Is there a certain amount of artificial feeding on the commons in Wales?—Yes.

Mr. Lubbock: Thank you for coming and giving us such interesting evidence.

(The witnesses withdrew.)

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HER MAJESTY'S STATIONERY OFFICE

MINUTES OF EVIDENCE

12

Thursday, 12th July, 1956

WITNESSES

The Friends of the Lake District
The Earl of Lonsdale
Mr. J. Edwards



LONDON

HER MAJESTY'S STATIONERY OFFICE

1956

THREE SHILLINGS NET

List of Witnesses

THURSDAY, 12th JULY, 1956

MR. P. CLEAVE

Secretary

MR. J. F. HOPKINSON

Legal Adviser

on behalf of The Friends of the Lake District

THE EARL OF LONSDALE

MR. D. A. PATTINSON

Chief Agent

MR. Q. L. W. LITTLE

Steward

MR. A. W. BINDLOSS

MR. J. EDWARDS

Chief Forester, Manchester Corporation

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at the County Hall, Kendal, Westmorland

Thursday, 12th July, 1956

Present:

MR. ALAN LUBBOCK, J.P., D.L.

in the Chair

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

MR. IVOR MORRIS, J.P.

PROFESSOR ALUN ROBERTS, Ph.D.

MRS. F. B. PATON, J.P.

SIR DONALD SCOTT

MR. G. L. WILDE, *Secretary*

MR. E. J. G. SMITH, *Assistant Secretary*

Memorandum of Evidence Submitted by the Friends of the Lake District

PREAMBLE—OUR TWO-FOLD INTEREST IN COMMONS

1.—Access

The interest of most of our members in the Commons of this part of the country lies primarily in the wild beauty of the district and in the free access, not only by footpath but anywhere, that the public has long enjoyed over these Commons. There are about 250 square miles of common land in the area of the National Park, and the Commons include much of the most characteristic scenery, all but two of the crags most favoured by rock-climbers, and nearly all the principal summits of the Lake District mountains.

The access that we so much value is exercised largely by long-standing custom. On most of the (to us) more important Westmorland Commons, however, this is reinforced by a statutory right to use the Commons for air and exercise. That is because a number of these Commons happen to be in areas controlled by Urban District Councils, and in such areas the right exists under Section 193 of the Law of Property Act, 1925. In addition, on about 13,000 acres of common land within the catchment area of the Haweswater scheme there is similar statutory provision under the Manchester Corporation Act, 1919. The same is true for perhaps four-fifths of the 10,000 acres that form the Thirlmere catchment area. Elsewhere the customary usage is never challenged, and for this reason the three County Councils reported to the Minister that no action to increase access in the Lake District National Park is required under Part V of the National Parks Act, 1949. This is evidence of the satisfactory *de facto* position of access at present, and in our opinion nothing should be done to deprive the public of the enjoyment of this particularly delightful form of access. It is a national asset that over several generations has progressively increased in value.

2.—Farming

Our interest in the Commons, however, is not confined to access. These Commons form an integral part of the traditional farming of this part of England, and we are closely concerned with the maintenance and prosperity of the farming community. In the first place hill farming, with its stone walls, its green meadows and its long low farmhouses, has given the landscape its essential character. The beauty of the Lake District is the work both of God and man. Secondly, it would be extremely difficult in the national interest to prevent large areas of the district from being blanketed with modern afforestation if sheep farming came to be economically unprofitable. Thirdly, very many of our members count among the happiest experiences of their lives their contact with the people of the dales and the hospitality that they have received, especially in farms and inns. From this has arisen a closer acquaintance than might be expected with the problems of farmers and a recognition that their activities form an essential element in the public enjoyment of the Lake District. In their livelihood common land has an important part to play: and we warmly welcome the appointment of a Commission which for the first time in forty years gives hope that the state of the Commons may be improved.

It will be seen that the problems of Commons in the North of England generally and in the Lake District especially are from several points of view, particularly from that of farming use, very different from those of, say, the Home Counties, and require separate and detailed consideration.

We therefore ask to be allowed to deal with the problems of the Commons both from the point of view of access to beautiful country and also as problems of the local farming community. Our thesis will be that the best solution to the difficulties of hill farming will be found along lines that do not at all restrict access.

I—THE COMMONS AT PRESENT

A—Management in Decay

Though there is great variety in the present use of common rights and in the past history of different Commons, over most of our area the Commons, though used, are unmanaged and unregulated. For some Commons there is not even an authorised list of joint users. On many the names of the owners of grazing rights are known, but no joint action is taken. On most there is no 'stinting' at all and adjacent farms are regularly offered to let or sell with 'unlimited right of grazing' on a specified Common. It may be that these are Commons so large in relation to the valley land to which they are appurtenant or appendant that stinting was never necessary. The number of sheep or cattle each man could keep in winter was so severely limited by his small acreage of inside land that he needed no fresh restraint on the Common in summer.

To this general lack of regulation there are two exceptions. For Matteredale Common in Cumberland, and for several Commons near Kirkby Stephen in Westmorland there are orders making regulations under the Commons Act, 1876, and these appear to be effectively exercised. The same is true of Bowes across the county boundary with the North Riding.

Other Commons have suffered in varying degrees from the decline of manorial control in the 19th century and its final abolition in 1925. On these there is usually no means of:—

- (i) Preventing those with no rights from using the Common.
- (ii) Preventing those with rights from over-using them, usually by putting on too many sheep to the detriment of other users whose sheep may be crowded out.
- (iii) Dealing with those who do not use or habitually under-use their rights. This creates a vacuum which is a standing temptation to over-use by others. If these others do fill it, there is a breach of rights and jealousy, and a tendency to extend 'illegal' stocking still further, indeed to overstock the Common, to the detriment of the ground and of the animals, as well as

of neighbours. On the other hand, if the gaps are not filled, there are fewer animals on the Common than there should be, and the nation's food supply suffers.

- (iv) Clearing ditches, 'beck-fencing', maintaining bridges, gates, folds, and sometimes roadways; replacing gates by cattle grids; repairing old 'cow walls', if these were again required; and causing those responsible for the boundary fences to maintain them. Sometimes these are stone walls which the commoners themselves are responsible for maintaining. There is no means of compelling them to do so.
- (v) Ensuring fairness between users. A new occupier, building up a flock from the landlord's stock to the number to which he is entitled by stinting or that his inside land would justify, may find himself in especial difficulty. There is nothing, for example, to prevent a man who uses the Common from buying 'over-plus' sheep from an outgoing tenant and altering their earmarks. This of course was a crime in the old days of the Court Leet. Landlords often try in their tenancy agreements to prevent an outgoing tenant from selling to neighbours, but this is hard to enforce, and the new tenant suffers.
- (vi) Settling disputes between owners or occupiers of common rights arising out of the use of the Common. Such disputes may arise out of 'straying' within the Common. There was a good custom by which each flock kept in practice to a particular part of the Common. This is dying out for want of pressure to induce co-operation. One bad result of this is that sheep stealing, which is on the increase, is more difficult to detect. A mixed batch 'disappears' more easily than a uniform piece of one flock.
- (vii) Determining the rights and obligations of commoners, for example in gathering sheep for a count. Questions of rights of turbary and wood gathering, which were formerly important, do not often arise now, though peat is still cut in some places and in others there is timber of no great commercial value. Any authority set up should have power to deal with these questions in case they should again become important.
- (viii) Preventing damage, and especially litter, by members of the public. This is exceptionally serious in our area. Litter, left usually by motorists and campers, cannot be collected even from fairly accessible places by the local sanitary authorities, if these places are common land.
- (ix) Dealing with the protection of wild life on the Commons. This is mainly a matter unrelated to their hill-farming use, but we hope that some provision for it might be made in the powers given to any body charged with the control and management of Commons, and that meanwhile the Commission will discuss the matter fully with the Nature Conservancy.

The most important single reason, we think, why management of Commons steadily decayed in our area during the 19th century was lack of leadership. The copyhold dues paid to the Lord of the Manor for the rights to rough grazing on the Commons were small in value and became smaller with the depreciation of money. Indeed he had frequently no interest in the dues at all, for in prosperous times the copyholders would redeem the dues on their stints with a lump sum, and the Lord's rent would be reduced to a peppercorn. This process was, of course, compulsorily completed under the Law of Property Acts, 1922 and 1924, on terms advantageous to the Lord and his Steward and expensive for the copyholders. The Lords, therefore, have almost completely abdicated their responsibility in our part of the world. There are a very few Commons where game rights still interest them, and some where quarrying operations provide them with a royalty. On two manors they have been friendly to informal (and ineffectual) attempts to restore a degree of control. But so far as grazing and stock-raising go, the only reason why an unregulated half-century has not produced chaos has been that the farmers are for the most part good neighbours to one another, and that the injuries some have suffered without remedy in the 'free-for-all' use of the Commons have not been on a

sufficient scale to attract public attention. The commoners by exercising some self-restraint and friendliness have usually kept the land grazed at a moderate level of efficiency, and have done as well as could be expected in a difficult situation.

B—Improvement of Common Land at Present Impossible

Our Commons are now used almost exclusively for grazing sheep. They have in the past carried cattle also and would be the better for it now. On the eastern fells there are a fair number of fell ponies.

Much common land, though not intrinsically valuable land, is certainly capable of improvement for grazing. Some should be better drained, much is covered with bracken, and very large areas would be greatly improved by applications of lime and slag. It seems quite possible that advances in mechanical contrivance will make both draining and manuring more attractive economically than at present; it is conceivable also that means will be found to check the bracken.* If the Commons were controlled, research on bracken and on the distribution of manures over rough ground would have a wider field of possible usefulness. It is therefore worth while to consider forms of management that make such improvements possible.

At present the same lack of regulation and of concerted action that precludes management still more effectually prevents the starting of any possible improvement. An owner of grazing rights who wishes to drain or lime the land where his sheep habitually graze does not do so, because he knows that the sheep of his neighbours on the Common or on adjacent Commons would flock to it and eat it bare. He would have no redress against trespassing sheep, so he lets his 'heaf' alone, even where he may be said still to have a heaf of his own. (See p. 379 (vi) above.)

II—POSSIBLE REMEDIES

A—Enclosure and Access

The enclosure of land has, of course, been the main instrument for improving the former common land of England and increasing its output. It has, however, been obsolete for eighty years; its usefulness came to an end when all the better land had been enclosed, as was recognised in the framing of the Act of 1876.† It certainly provides no answer to the present need in our part of the country. In view, however, of the proposal to revive it in Allendale, enclosure may be considered by the Commission, and it may be worth while to put forward the outlines of the case against it as this appears to us.

The economics of enclosure are limited by the cost and durability of fences. On our fells these may be stone walls or they may be made of posts and wire. New stone walls are never built on the hills now-a-days and never in the valleys to our knowledge except where the highway authority moves a wall back and re-erects it. Most sheep farmers can still wall, many of them well and quickly, but there are no longer any men in the valleys whose trade or occupation is dry-walling. The last survivors of the fraternity that built the great intake walls died within our own memory. Stone walls, therefore, are out of the question. Post and wire fences have been tried within the last half century and have been a complete failure. Vibration in the gales and probably salt from the western seas play havoc with the galvanised surface and good heavy wire disintegrates rapidly in the moist air. For example, part of the Lowther fence round the Ennerdale watershed (a former Common) was new or fairly new in 1906. We know that it would not turn sheep anywhere by 1914, and it may have gone even earlier. The ruins of such fences are an unfortunate feature on many of our ridges. In some places, such as

* If, for example, a pick-up baler could be made, to work over steep and rough ground, the young bracken (poisonous if cut and left) could be turned into a most valuable compost for the valley fields, with great benefit to the grass it at present smothers.

† The process became less and less frequent in the last decades of the century and we think there was only one instance, and that a partial one, in our area after 1876. See report of Select Committee on Commons, 1913.

the comparatively low summit of Mellbreak (1,676 ft.), where enclosure has been tried, the fences are gone, and not having been of stone are quite unlikely ever to be renewed. A local estimate for wire fencing on the top of Mellbreak is £1 a yard. At the moment (March, 1956) an owner is trying unsuccessfully to sell a formerly enclosed piece of Hen Comb (1,661 ft.). No one would take it as a gift, if there were an obligation to fence it, and until there is a fence any neighbour with sheep can use it without purchase. This is not an isolated case. The trend in fact is for formerly enclosed land to fall back to something like common. It runs contrary to any proposal that common land should be enclosed.

If therefore the high Commons were divided between the owners of grazing rights it is most unlikely that the new owners would fence their allotments, and consequently the desired improvements would be left undone. Even for our lower-lying rough grazings the restoration of some type of joint management might well be the better proposition. For economic reasons in fact enclosure is not a solution.

Though we think that this economic argument is so cogent as to be in present conditions final, it is not the only argument against enclosure. It can be strongly supported by a plea for the free walking access of which we have spoken. Even if in the future some cheap form of fencing should be invented which would make enclosure a reasonable policy, we think that the problems should be solved by other means, so that freedom for walkers and climbers to take what route they like, which is one of the principal charms of the Lake District, and a large item in its value as a place of national recreation, may never be restricted nor impeded. The national interest in the preservation and extension of such practices has been recognised by the passing of the National Parks Act, and we hope that so far from recommending the diminution of this freedom the Commission will find a way to confirm it.

If on the other hand the Commission feels bound at any point to recommend any measures that may restrict access, we hope it will propose that any such orders or regulations should be submitted at an early stage to the National Parks Commission and will not be proceeded with if found to be contrary to the spirit of the National Parks Act.

B—A Modern Equivalent for the Manorial Court

For reasons, therefore, both of present day economics and of access for all time we have been driven to consider whether a solution can be found in the establishment of a control not unlike that which used to be exercised by the Manorial Court or 'Court Leet'.

It will be seen from the above analysis that the improvement of common land must be undertaken simultaneously over a fairly wide area. It would be no use improving one Common and thereby inviting the sheep of adjacent Commons to eat the ground and nullify the improvement.

There is a further factor in the Lake District pointing in the same direction. We have here a considerable amount of unfenced land the status of some of which is uncertain. This land usually abuts on a Common, and if the Commons were improved sheep from these areas would invade them. Similarly there are lands known to be in private ownership abutting on common land and not distinguished from it by any fence. It will be necessary to bring both these classes of land within the purview of the same authority that endeavours to deal with the recognised Commons. The owners of this land would have good reason to welcome the possibility of its integration in a scheme of joint management.

In our area also the county boundary is often an unfenced and unmarked line with open country, usually Common, on both sides.

It seems to us that the problem should be dealt with by giving new statutory powers and obligations to the County Agricultural Committees of the Ministry of Agriculture. They have, usually within their own membership, access to the essential local knowledge and experience. They would have no difficulty in co-operating across county boundaries. Above all, they have in the national need for agricultural output a strong and entirely proper reason for assuming the responsibility of leadership. Without leadership on the spot nothing will be done.

On the other hand, most of our principal Commons, if not all, are integral parts of the economy of a small community, the farmers of a parish or a valley, and should be so administered. They are, as they have always been 'commons appurtenant' or 'appendant' to defined holdings in the valleys, and the use of each Common should be confined to those who are farming the lands that it serves. There is also some local variation in the usages and history of different Commons and we should wish to preserve this variety, where that can reasonably be done.

We think, therefore, that the right method in general will be for the County Agricultural Committee to stimulate and support any grouping of commoners, preferably under the Lord of the Manor or with his co-operation, that can be attained in the various localities. A few of these groups already exist, or have existed, informally, and we think that in other places a strong lead, such as could be given by the County Committee, would be welcomed. In some places more than one Common could be dealt with as a unit.

The County Committees, then, should be given power to take the lead in organising a new form of Court Leet, the general lines of which should be laid down by statute or statutory order, to manage each unit of common land. It should be the obligation of the Court to see that the grazing is rightly regulated and that any suitable improvements are put in hand. Grant on these improvements, on 'Hill Farming' lines, is essential, and the County Committee should be responsible for seeing that the money is well spent. This Committee should have compulsory powers in the background to take over and manage, with due regard to existing rights, any Common, or under safeguards any similar and adjacent rough land, where the setting up of a Court by agreement proved unattainable, or where the Court failed to do its work properly.

On a Common at present unstinted the Court should allot stints among the commoners on the basis of their winterage. It should on any Common have power to raise money for the purposes of the Common by a levy on the commoners, as is still done from time to time under the Act of 1876 on Matterdale and the Kirkby Stephen Commons, and perhaps by letting on a yearly and temporary basis any rights whose owners are manifestly not using them. The Court might also have the right, as on Matterdale, to levy a small 'fine', really in the nature of rent, for every sheep wintered on the Common, though this is not in principle very satisfactory. It should be able to inflict token fines for infringement of Common Rules. The ordinary courts should be empowered to adjudicate if fines above a moderate sum were involved, and the rules of the Common, properly instituted, should be valid before such courts. In these actions either the Court of the Common or the representative of the Ministry should be entitled to prosecute.

The relations between the owner of a right to graze on the Common and the tenant to whom he let this right would also require some regulation. Where stints are let, as they usually are, with a valley farm, the agreement ought to bind the tenant to abide by the Rules of the Common and to give all assistance (e.g. in gathering for a count) that may be lawfully requested. Existing tenancy agreements would need to be modified in this sense and this should be legally provided for. The new Courts will not be effective without the co-operation of the actual occupiers of the rights, and although most of them would gladly join in a scheme managed by people whom they can trust they will do so the more happily if they know that their neighbours have no choice. This has been clearly shown in the course of recent informal attempts to establish control. It is where active co-operation is required that the Courts may from time to time need some form of sanction, the mere existence of which may be sufficient to produce the action required.

The fate of unused stints is one of some difficulty. There are cases where some stint-owners have been entirely lost, probably after their copyhold dues had been commuted. In others, owners would hold on to their property in the rights with a natural tenacity, and yet they show no inclination to use them. It seems best that the Courts should have the power to let such stints for the joint benefit of those actually using the Common, provided that the owner is informed and that the letting is on a temporary basis pending the resumption of usage by the owner.

This would bring most users into line, probably inducing a sale or a letting of the stints.

All letting should be reported to the Court, and there should be no occupation of stints by owners or tenants not occupying lands farmed with the Common without the specific consent of the Court. The Court might well allow an exception if it were impossible to find a strictly local occupier for the stints.

The Court should further have the power to vary, either up or down, the validity of a stint-right. If, for example, a Common where twenty stints or 'grasses' give the right to graze 100 sheep or 10 beasts was in the Court's opinion under-grazed, it would have the power to make a stint justify the presence of more sheep or more cattle or both. And conversely, if it is over-grazed. This power might be used in such a way as to encourage the farmers to keep more sheep or more cattle as national policy or as the state of the Common demanded. Here a Ministry lead might be conveniently given through the County Committees.

The Courts should also have the power to allot particular parts of the Common to particular users, as is done (e.g.) on Stainmore and has been done informally and less successfully elsewhere. This is a practice that carries the advantages of enclosure without the expense of fencing.

The Courts must clearly also have the powers necessary for initiating improvements. The details of such powers are not a matter on which we offer an opinion. But we should like to make one proviso. We think that the removal of bracken and particularly of scrub oak and other rough woodland would detract from the beauty of the scene and, although we feel we cannot argue against improvement in general on these grounds, there may be particular places where trees, etc., should be spared and we suggest that the local planning authority should be informed of all plans that alter the appearance of the landscape, and subject to appeal should have the final word thereon.

Finally, we do most strongly urge that the rules of these Courts should safeguard free public access, and that the Courts should be able to deal with litter and damage to property, and should be encouraged to interest themselves in the preservation of wild life in forms not harmful to agriculture.*

In general such Courts should have the power and the obligation to deal with all the matters mentioned as at present unsatisfactory in our paragraphs above on management and improvement.

The practical task of managing Commons on these lines has its difficulties. In the old days some Manorial Courts used to appoint 'grassmen' (a 'grass' being a grazing right, the equivalent of a 'stint') who saw that a count of sheep was fairly taken and reported to the Lord of the Manor, on behalf of the commoners, instances of trespass on the Common, for example by minor enclosures or the over-use of rights, or the bringing in of unauthorised sheep or cattle. They would keep watch for any irregular use of a Common and report it.

Such close local supervision may not always be possible. The authority in charge of the Commons, however, must be able to call on the (part or full-time) services of a small number of skilled shepherds who would supervise the gathering of flocks for a count, or actually tend the sheep on a Common for the summer, as at present on some regulated Commons (e.g. at Bowes, till recently at Austwick, both in Yorkshire). It is difficult sometimes to find a shepherd who is free for the job. These men might sometimes be needed outside their own immediate locality, another argument for organising within a county framework. Smaller units could not always

* We have far too many foxes, although the six local foot packs may kill over 400 grown foxes in a year and many cubs. Carrion crows also are a menace. And in a rabbit clearance area, like Westmorland, there is no one to be responsible for clearing rabbits from the Commons. In places red and roe deer need control. In general we have all too little wild life in the Lake District. Our less common raptorial species (peregrine, merlin and the occasional harrier) and our carrion feeders (the buzzard and the raven) are now generally recognised not to be harmful to the interests of hill farming, and we wish that the measures taken for their protection were more effective.

guarantee a complete gathering and an impartial count, recognised to be reliable, which is the first essential if the grazing is to be properly managed.

The reinstitution of joint management on some such lines as those we have outlined seems to us to give the best hope of satisfying the needs and wishes both of the farming community in these counties and of the visitors from all over the world who come to the Lake District. The new Courts would bring up to date and, with some modifications, preserve an interesting and valuable tradition of country life in these parts. We are encouraged in suggesting their institution by the undoubted success, within the limits that those responsible set before themselves, of the Commons, at Matterdale and about Kirkby Stephen, referred to above, that are regulated by schemes under the Commons Act, 1876. It is significant that the only instances of improvement on a Common known to us have been on these Commons. Another significant fact is that when grazing rights on Stainmore Common are for sale outright they may fetch as much as £7 for the right to graze a single sheep and on a less good neighbouring Common, also regulated, £2 or over. Even £2 would buy rights for seven or eight sheep on some of the stinted but unmanaged Commons of the district. We do not suggest that this is a true measure of the relative usefulness of managed as compared with unmanaged Commons, though it may indicate the degree of depreciation suffered by former copyholders and customary freeholders. We think the undervaluing of the rights on an unmanaged Common confirms our view that the position there urgently requires attention. And the fact that the rights maintain their value on regulated Commons shows that with proper leadership the joint management of a Common can have an effect measurable in money values. If this can be done on Stainmore, it should not be impossible elsewhere.

On our view, therefore, the choice before the Commission is not a choice between the present unsatisfactory position and the handing over of a fee simple to the Lord of the Manor or to the commoners in proportion to their rights. The reinstitution of Courts of joint management offers in our opinion a better future for the pastoral agriculture of this part of the country, and certainly there should be no interference with the freedom of public enjoyment mentioned in the Commission's terms of reference.

We shall be glad to quote in oral evidence illustrative instances, if required, of all the difficulties and other features of the present situation to which we have referred, and we hope that the Commission will invite us to discuss with them the proposals for improvement of management, access and productivity suggested in this memorandum of evidence.

Supplementary Memorandum of Evidence Submitted by the Friends of the Lake District

The evidence given by the Forestry Commission

The following has reference to the scheme for 'parish forests' put forward to the Royal Commission by the Forestry Commission, as reported in the press.

Difficulties in and objections to the Forestry Commission's proposals

1. In the Lake District, it will be recalled, the central 300 square miles form a zone within which the Forestry Commission have agreed with the C.P.R.E., and published the Agreement in an official print, not to acquire new land for afforestation. It is assumed that in conformity with the principle of which the Agreement referred to is an expression, the Forestry Commission would not seek to promote such 'parish forests' within this area.

2. The area covered by the above-mentioned Agreement was not as large as the Friends of the Lake District and the other amenity organisations, represented by the C.P.R.E., believed at the time, and still believe, it was desirable to reserve from commercial afforestation if the free access and the characteristic landscape beauty

of the Lake District were to be preserved. A large area of common land of great scenic importance lies on the seaward side of the western boundary of the protected area, extending from the Duddon Valley northwards to the Calder and the Ehen. There is also an important area of Commons on the eastern fells interposed between the boundary of the protected area and the boundary of the Lake District National Park, as now constituted. These are all grazing for fell sheep.

The results of the Forestry Commission's proposals would be:

- (a) twenty years' (at least) exclusion of the public from $\frac{500}{1000}$ acres, and thereafter access only by footpath through a 'tunnel' of trees;
- (b) the commoners' rights over the planted area permanently cancelled;
- (c) the half not afforested will be useless for sheep as soon as the fences are allowed to decay (say, when the trees are up to six feet in height and so above the reach of sheep). Sheep will then be lost in the trees and unrecoverable;

N.B. We would like to cite the case of the Ennerdale Valley. This was fenced after an enclosure award in 1879. About forty years ago the entire land of the valley was purchased by the Forestry Commission. The plantable land (roughly up to the 1,500 ft. contour) was ring-fenced and planted. The land up to the skyline (forming a 'U' round the afforested area) was leased by the Forestry Commission to the National Trust on a 999 year lease. The planting separated the bottom land in the dale from the fell grazing with the result that the powerful Ennerdale Dales flock was extinguished. (By reason of the decay of the fences along the summit ridges this upper land—legally not commonable—is now grazed by the sheep from the adjacent commons, adding to the difficulties of the flock masters in counting, dipping and tending, although in effect adding to the area of available grazing. A ewe with three years' lambs following her was recovered from the forest after having been completely lost for this period, without clipping or dipping. The fault lay with the Forestry Commission who had let down their fences.) In the case of the upper Duddon plantations, the same thing will happen when the fences of the plantations fall into disrepair;

- (d) were this scheme ever to come into effect any 'vesting' should be in the ownership of the Planning Board, in a National Park, not in that of the local authority. If the areas planted are small and separated, the expense of fencing will be great. If the land chosen is suitable for some hardwoods, the expense of maintenance is increased. The Forestry Commission is interested in the production of timber, not in the preservation of landscape. There has been continued contention about this point between the Forestry Commission and the Lake District Planning Board and with the amenity societies, and also about the damage to sheep farming caused by afforestation. The whole plan would be unremunerative for the Forestry Commission and full of annoyance for the farmers;
- (e) if it is suggested that fears lest the landscape will be prejudicially affected are exaggerated it is worthy of remark that the Forestry Commission do not employ landscape architects;
- (f) the proposed consent of a majority of the known-commoners will clearly not do. A majority vote is not valid: in any event common rights attach to land holdings and not to persons;
- (g) nor should the Lord of the Manor be allowed, by reason of a change of policy, to derive economic benefit from land in which he has never held an unqualified freehold, and from which he has not been deriving any income whatever since he received the capitalised value of the 'customary dues'—a vanishing asset—in 1922;

(h) the present safeguards (under the Forestry Act, 1945) for common land would by the Forestry Commission's proposals be abolished. Today the Forestry Commission must advertise any proposed acquisition of common land; submit to a public inquiry, and afterwards, if the opposition is maintained, obtain permission from Parliament, where the Order can be opposed under the procedure of the Statutory Orders Act. These procedural safeguards would all go.

Shelter belts. Shelter belts, providing shelter for stock or (lower down) for buildings, are a development which the society would not desire to see altogether excluded. Planted in areas of, say, five or six acres, in positions favourable for shelter, and planned in shape and species by a landscape architect, they might be acceptable. Such would not be worth the while of the Forestry Commission, and should rather be promoted in a hill farm scheme (50 per cent. plus grants) by the commoners' Committee of Management.

Legal Access

We wish to emphasise the leading importance of that free walking access to which we have referred (p. 381 and elsewhere) as enjoyed on all the Lake District Commons, and to relate this particularly to the 25 square miles of Commons which fall within the territory of the (so-called) Lakes 'Urban' District Council. To these 25 square miles legal access was automatically applied by Section 193 of the 1925 Law of Property Act, and during the intervening thirty years there has been no difficulty or protest. We are of opinion that the same would prove true for the rest of the Lake District Commons; indeed a very desirable gain in control would result, as is argued in the case which has now been submitted by the Ramblers' Association.

The 1876 Commons Act

We have stated the important precedent created by this Act, through the benefits given to the commoners by the provisions for the improvement and internal control of the Common. We think it wise to add, if indeed this be necessary, that the provisions of this Act are not in any way adequate today to the needs of access—either in general or in particular in a National Park. The 'social' benefits made possible by the 1876 Act are not general but are for 'the benefit of the neighbourhood', and these are listed as:—access to particular view points; preservation of particular trees and objects of historic interest; and preserving a privilege (when a definite recreation ground is not set out) of playing games or enjoying other species of recreation on such parts of the common as may be thought suitable. (And as much as is thought fit of the common may be legally inclosed, instead of being 'regulated' in the manner we have described.) The results as concerns four Commons in or near the Lake District (Appendix V in Shaw-Lefèvre's 'English Commons and Forests') are as follows:—

*Percentage of the gross area
inclosed and/or regulated
which was left free for access
or recreation
per cent.*

Matterdale (Cumberland), 1879.	5,400 acres	...	...	8
East Stainmore (Westmorland), 1879.	10,400 acres	...	...	0.4
Abbotside (N. Riding, The Muker, etc. moors), 1880.	9,700 acres	...	...	0.8
Mungisdale (Cumberland), 1892.	500 acres	...	...	0.9

Hill Farming and Access

While being opposed definitely, as we explained, to any form of legal inclosure, and while regarding Sections 193-4 of the 1925 Act as the charter which protects Commons as access areas, we think we ought to make it quite clear that we are not opposed to temporary fencing (e.g. for reseeding) for agricultural purposes, or to some road-side fencing—should this in fact be found necessary, which we hope will not be the case and that cattle grids will suffice, these being in no way an

obstruction to the eye—but *subject always to there being no legal inclosure as a result, and to the due provision at frequent intervals of stiles for passage.*

It is obvious that this will need some change in the law, to provide an answer to the question: When is fencing a piece of land not an inclosure in the eye of the law? Without an answer to this question, the old rigidity, which is so hampering, will remain. We desire, as we said, to remove the difficulties of hill farming by methods which will not restrict access. If this partnership of access and agriculture is not maintained, there may well be a strong demand in the future for some widespread inclosure.

Planning Authorities, Voluntary Societies, etc.

We mentioned in our evidence the need for some reference of problems to the National Parks Commission. We should like to extend this reference to the Park (or other) planning authorities, and equally to those voluntary societies concerned with open air recreation and with the general protection of the countryside. Any commoners' committee of management will be concerned both with agriculture and with access. On agriculture, those from outside the commoners' own group cannot normally expect to express an opinion; but there are many questions concerning access, byelaws and their enforcement, general conduct and so on which will concern a much wider interest than that of the hill farmer alone. It would therefore be to the general advantage, for smooth working and for the useful and needed interchange of knowledge and experience, that the Minister should give to voluntary societies (and also to the planning authority) a definite representation—not on each committee of management but on a *regional* committee which would deal with general principles. Societies which are maintaining the cause of access now, will have something then of value to contribute and should be placed officially in a position to be constructively useful, and the planning authority, equally, should be personally represented in discussing this matter of access, which under the 1949 Act concerns the planning authority intimately.

Miscellaneous comments and additions

(i) We call attention to a valuable provision in the Matteredale award (1879) by which the Lord of the Manor is instructed, if he makes any mineral working, to do as little damage as is possible to the Commoners' grazings, and to pay for damage done to any 'improvements'. This is an interesting offshoot from the very old provision of the common law of the land by which the lord must always leave enough grazing for his commoners' needs.

(ii) *Bracken*: Although we referred to the aesthetic loss which would follow a complete clearance of bracken, we do realise the need for research into means of controlling its growth, which in its full development is as great a hindrance to the walker as it is to the flock-master. We call attention to the new use now of a chemical spray for the control of the rusbes (seaves) which fill so much wet land; a corresponding spray for bracken control is not beyond hope, and is an urgent need.

(iii) We referred to the 'sale' of stints. We wish to explain that the only rights of common pasture which can thus be sold and bought are those which constitute 'common in gross' and which are quite detached from the occupancy or ownership of any particular land. These floating rights are in the Lake District quite uncommon. The normal rights of common ('*levant and couchant*') are of course attached to a *holding of land*, not to a person, and cannot be sold. If one may so put it, they 'run with the land'. These rights '*levant and couchant*' were by the old manorial customs supposed to 'stint' (i.e. numerically to limit) themselves, with the manor court to exercise sanctions; but if, as we hope, these commons of the normal type become today numerically stinted, they do not thereby become saleable stints, i.e. they do not become stints of the kind 'common in gross'.

(iv) We make a minor addition to our other written evidence. There are bound, under any revisions of law and usage, to be some notices displayed on commons or at their main entry points: such notices should, we suggest, be small, seemly and briefly worded in the normal man's language.

Examination of Witnesses

MR. P. CLEAVE and MR. J. F. HOPKINSON on behalf of The Friends of the Lake District.

Called and examined.

1703. *Mr. Lubbock:* We are very glad to have this opportunity of meeting you, and grateful for your interesting memorandum together with the supplementary paper you have now added to it. Could you first give us a brief general description of the systems of husbandry and management of the hill farms in this part of the country?—*Mr. Cleave:* Mr. Hopkinson is a great deal better qualified than I to give you the more technical details of local farming; but generally the commons in this part of the country are mostly rough hill grazings. Only a very small proportion of the land concerned could ever be cultivated or even ploughed. Drainage of course is not possible on much of it. The special characteristics which distinguish the Lake District are the husbandry, the characteristic local Herdwick sheep, and our method of landlords' flocks—*Mr. Hopkinson:* The characteristic farming in this part of the world so far as it affects commons is this; in the dale heads there is a certain amount of well-watered and fairly sound agricultural land which has been inclosed and cultivated for hundreds of years.

Above this there is open fell-side running up to 3,000 ft. in places. That was originally the waste of the manor and the old manorial customs I think are the origin of the common rights. The farms adjoining the fell have the ancient right of turning out flocks of sheep on to the high land, which may run for many miles without any break other than the natural breaks of ravines and rocks, which vary of course from place to place. To generalise, the number of sheep you put on your fell in summer is the number you can winter on your inside land.

The fell flocks have from time immemorial been the Herdwick sheep. There are some crossed flocks growing up in places now, but by and large it is still the Herdwick with its special characteristics. It is very tough, will stand a lot of bad weather and hard treatment, is extremely active and can jump almost like a deer. It is nothing like the ordinary sheep of the lowlands and it has the characteristic that it will stay on its own

portion of fell provided it has got enough to eat on it. The flocks which belong to a certain farm go by habit on a certain part of the fell and have done so from time immemorial and, provided that the flock master retains in his flock an adequate proportion of old ewes to act as leaders, it will go back to its own bit of the fell and stay on it indefinitely. That habit is only likely to be upset if the flock is so reduced or so badly handled that there are not enough of the old ewes to act as leaders and not enough young ones being trained up to take on the job; or, of course, if there is a shortage of food on its piece of fell, when it will tend to stray looking for it. If the flock from farm A is increased beyond what A's piece of fell—'heaf' as we call it—will normally stand, it tends to spread out and push on to the ground of the next flock. Alternatively, if a heaf is understocked the flocks from around tend to close in on it and most troubles arise from understocking or overstocking by one or other of the commoners.

The difficulty in improving the fell is of course that's unless by agreement everybody does their cultivation, destruction of bracken, draining, liming and so on simultaneously, the man who does his first merely attracts all his neighbours' sheep on to his bit of fell and is worse off than when he started.

1704. Do the flocks have a strong instinct for adhering to their own plot, and do they not mix?—They do not mix. They do of course mingle a bit, but on the whole if one flock encroaches on another one, the other retreats rather than mingles. I should perhaps have added that, as it is essential that the flock is linked to its own farm and its own heaf, the practice is for the landlords to own the basic flock, with a proportion of each different type of sheep, and to include that in the tenancy.

1705. Is that peculiar to this part of the world?—I do not know of it anywhere else.

1706. You mention the sale of 'overplus' sheep. What are 'overplus' sheep?—The landlord's flock will consist of a proportion of ewes and hogs of various

ages and will, as I have said, be included in the tenancy. It is inspected by representatives of both sides at the end of the tenancy. The problem which then arises is that that basic flock may not represent the full capacity of the farm or the fell. The tenant will have the year's lambs and any additional sheep which he sees fit to run with the landlord's flock.

1707. There is nothing to prevent him adding to the basic flock?—No, and of course the natural increase of the flock, the lambs, go to expand it; and unless one is very careful in drafting out the flock and disposing of the drafts to a good distance, they come back to the original piece of fell, and to the flock there whoever may be the owner of it.

1708. Does the tenancy agreement lay an obligation on the tenant to maintain the flock as it was when he took over?—Yes, he must hand over the equivalent numbers, types, and ages, when he goes; if the overlookers do not consider they are up to standard, he will have to pay or, if they are above it, the landlord may owe him the difference, but the numbers must be accounted for. Anything which is 'plus' to the flock—the 'overplus'—and is not part of the landlord's portion is the property of the tenant and he can dispose of it but he ought to do so well away from the heaf. —*Mr. Cleave*: There is one additional point; on the wilder parts there are frequently breaks in the stone walls, or fences which will not contain the sheep, and therefore there is a certain amount of straying from one common to another, and we have an institution in the district, the shepherds' meet, where the shepherds meet at strategic points and strays are exchanged.

1709. Will those strays be the rather independent-minded sheep, not the common run sticking to their own heaf?—Yes. It is exceptional to find the heaf defined in documents but it is most common to find it very well known amongst the neighbouring farmers. A new tenant is conducted over his land by his neighbour who will point out all the landmarks which define his heaf.

1710. *Sir George Pepler*: Are there no commoners other than the occupiers of the farms which run the sheep? Has nobody else common rights of turbary or anything of that sort?—On some of the commons there are certainly rights of turbary and woodmere and so

on, but I would say that now, as a generalisation, it is extremely rare for them to be exercised. The value is usually very small.

1711. *Mr. Lubbock*: What is "woodmere"?—'Woodmere' is the same as estover.

1712. *Mr. Morris*: You have described sheep entitlement, as the number which should be wintered. In the case of away-wintered stock, how does that affect the entitlement?—*Mr. Hopkinson*: It is very difficult to assess the entitlement. I think in most cases it is fairly flexible. One man will have a few more, another a few less; but in the case of dispute the only test, apart from stinted commons, is what can be wintered on your own land and even—for this is quite usual when wintering your flock—further down the valley still, on other land altogether. Provided you do not overstock your heaf that is generally recognised as quite permissible.

1713. In the event of away wintering, and therefore of an increase of stock, what measures are taken to control any disproportionate use of the heaf?—Nowadays in practice it is rather difficult to do anything about it. The difficulty of stopping it is very great.

1714. Does the same difficulty arise when there is improvement of the in-bye land—'intake' I think you call it here—and the capacity increased?—I cannot quote an example where I know it has arisen but there is in certain areas fairly frequent grumbling that so-and-so is overworking his fell and pushing off his neighbours. I know plenty of cases where that has happened, one man pushing his neighbour off the latter's heaf because his flock is spreading out from his own heaf.

1715. *Mrs. Paton*: Is there no means of settlement for that problem?—In practice, no. On the whole the fell farmers seem to be remarkably good neighbours but there are a few who do not recognise fairly their obligations to their neighbours.

1716. *Mr. Lubbock*: You mention that point of good neighbourliness in your memorandum. Is the force of public opinion really the only controlling factor?—Yes, that is so.

1717. *Mr. Morris*: Do I understand from your evidence that there has been little improvement of the upper reaches? Has there been, within your knowledge,

any combined operation to bring about improvement?—In the Lake District proper, I do not think so. I would say, from a knowledge of the district over a long period, that the commons were deteriorating, not improving. The bracken is spreading quite definitely.

1718. *Professor Alun Roberts*: I believe that formerly, say up to the 1914 war, the proportion of wether sheep was much higher than today on the fells, and the wether was in fact the controller of the heaf boundary in that he stayed on the open fell all the winter. I take it ewes are withdrawn from the open in the winter?—Almost invariably.

1719. Would the higher proportion then of wether sheep which did not leave the fell after the first year be effective all the year through in maintaining the boundaries, particularly in early spring?—I think that would be true.

1720. Has there been no tendency to increase the proportions of wethers in the last few years as has happened elsewhere? I would like to know if there has been a slightly stronger tendency than would have been the case in the previous thirty years.—I have never seen a change in the proportions on tenancy agreements, but whether in fact the tenants are doing it, I am sorry I cannot tell you.

1721. *Mr. Lubbock*: I want to ask you, arising out of your written evidence, a question about inclosure. You use the word generally, I take it as for instance, at the beginning of section IIA of your memorandum, when you discuss possible remedies, to mean legal inclosure, the conversion of common land into freehold land, and not just the putting up of fences?—Yes, that is so.

1722. On the question of putting up fences you give account of the great difficulty and expense and imply that it is pretty useless in the long run. Does experience bear that out all over the district?—Yes, I think it certainly does. I have a case before me at present where we have a fenced allotment at the top of Kentmere. The fence has only had a very brief life and has gone.

The old method of fencing with stone walls is out of the question today. To take a simple example, supposing on a really high common of say 2,500 acres, where there are four or five or perhaps

more flocks heaved. To fence each part—each heaf—one would have to find the minimum of four miles of fencing and it would certainly not cost less in posts and wiring than £1 a yard. The ewes struggle with the wires, and with the weather destroy them.

1723. You say that the common land on the whole is deteriorating, that it needs improvement but that improvement done piecemeal nullifies itself because the sheep crowd on to it. How can improvement be done without inclosure?—It is a very difficult matter. It has got to be done by everybody together and it has got to be done on an effective scale.

1724. By everybody together, do you mean each farmer on his own heaf?—Either each on his own, or by some form of co-operative working round the fell.

1725. Can you carry out simultaneous improvement over a fell of 3,000 acres or something of that order?—It is extremely difficult, and obviously there are many fells which are not susceptible to any appreciable improvement; but I think there are undoubtedly places where drainage, bracken destruction and liming will improve the pasture. The high rocky land, of course, one cannot work on anyhow.

1726. *Sir Donald Scott*: Do you think there could be some improvement by carrying more cattle on these fells?—In certain areas, I would say, yes.

1727. *Mr. Morris*: Does the deterioration arise from the fact that there are less cattle carried now? Has there been a change in that respect?—That is a technical question which is rather out of my depth.

1728. *Mr. Lubbock*: Shall we turn to another general point touching on the terms of our reference, the question of the interest of the public at large in the open spaces, which of course is very important here in the Lake District. You mention the different situation where the commons are in an urban district. Are you implying that the provisions of Section 193 of the Law of Property Act, 1925, should be extended to all common land?—*Mr. Cleave*: We do say in our memorandum that we hope that the Commission in its recommendations will see its way to confirm over our Lake District commons, and even to extend,

the free access enjoyed under Sub-Section 193 (1) of the Law of Property Act on the urban commons. We do not go farther than that; but if in the course of your recommendations you would think that it is necessary to apply to commons in England and Wales, Section 193 of the Law of Property Act, we should have no course but to welcome it. On the other hand we greatly appreciate the free access by custom which the public has enjoyed for so many years over the Lake District commons. There has never been any difficulty. Conversely there has never been any difficulty in the last twenty years since six former parishes were amalgamated in the Lakes Urban District, which is a large rural area. We have never had any difficulty owing to the operation of Section 193.

1729. Are you nevertheless satisfied with the existing *de facto* situation?—We are indeed.

1730. Does the Planning Board take the same view, on the question of access?

—Yes. When under part IV of the National Parks and Access to the Countryside Act, 1949, it was necessary first to carry out a survey of open country and then to make recommendations as to any action needed to be taken to confirm or increase public access, all the three County Councils who have territory in the Lake District National Park replied that in their view no such action was necessary because of this very fact of free access.

1731. Turning to afforestation, you have some rather strong terms in various passages, not, I think, about what has been done but about what might be done. On the other hand would you agree that there is scope and indeed a certain amount of necessity for more planting in the way of shelter?—Yes. We should not in any way discourage that.

1732. To turn to the larger scale and your complaints about the Forestry Commission; do you think that their system of planting and arrangement of their plantations, should have been differently drawn in the interests (a) of farmers and (b) of the amenity of the public?—I think there are three aspects to this question of large scale afforestation in the Lake District. First, the question of public access; it is a great holiday area, and in general, close

set plantations are inimical to public access. Secondly, there is the question of the landscape and its characteristic appearance. The softwoods which are the most simple and profitable of modern crops are mostly importations into the Lake District. The even-branching and the spiky top and the close, straight stems, present a totally different landscape pattern from the round-topped and unpredictable patterns of the native trees. Similarly, plantations in square blocks and with straight rides for convenience in fire breaking, and maintaining access for thinning and so forth, introduce a hard mathematical pattern on to our fell sides and blanket the fascinating irregularities, whereas the native trees cling to the fell sides; they take the shape imposed on them by the wind and their struggle for light and air, and they are indeed an ornament of our fells. Owing to the charcoal burning of 150 to 200 years ago they are not at all numerous and neither interfere with the fell grazing nor act as a barrier by blanketing the tops of the hills as in the Harz Mountains and Black Forest of Central Europe.

The third aspect is farming. In general it has been our experience that farmers, whatever their original welcome to the Forestry Commission, have not found the Forestry Commission particularly comfortable neighbours. There is the occasional difficulty about the odd sheep getting into the forestry plantations because the fences are let down when it is no longer necessary in the interests of young trees to keep them up; and it is argued by the farmers that the plantations give cover to various rapacious creatures, foxes and so forth, which multiply and do great damage to the flocks.

1734. To go back a little, the appearance which you have described of the conifer plantations of course refers to single species plantations at a certain stage of their growth, of which kind of afforestation there may be a great deal at the moment. Do you notice any change in the Commission's planting policy?—No, Sir. I have heard a number of statements that the policy is changing, but so far as the evidence of one's eyes in the Lake District is concerned, one does not see it.

1735. *Sir George Pepler*: Is it true that Wordsworth introduced the copper beech into the Lake District?—I have

heard it stated but I do not know. Wordsworth was a great campaigner against those who introduced the European larch.

1736. *Mr. Floyd*: Would you prefer to see the blocks of old larch at Derwent water cut down? Would people be happier without them?—Just as the lover of the Lake District after a number of years earns his place and becomes accepted, I think we can accept the European larch as almost a native.

1737. The tourist trade obviously brings a great deal of money into the Lake District. If it was not for that trade would there be a greater pressure both for the improvement of the hill farms and for forestry employment than there is today?—I think there might well be pressure for afforestation to provide employment. It is common knowledge that during the time when the price of wool was disastrously low many a hill farmer was able to balance his budget by reason of the visitors his wife took. We regard the marriage between the tourist trade and fell farming as a very happy one and a guarantee of the prosperity and future of Lake District fell farming and continued public access to commons.

1738. We have heard a good deal about sheep which get lost, particularly in plantations of Sitka spruce. What numbers of sheep are involved?—I doubt whether the numbers are very large, but an instance is news. In the instance given in our supplementary memorandum, paragraph 2 (c), the forest was spruce, as it happens.

1739. *Mr. Lubbock*: I have one other point on the amenity angle. You talk about litter in one place in your memorandum and say that nobody can collect it on commons. Cannot the local sanitary authority collect or do anything about it on commons?—I think it would be fair to say that the local authority can be prevailed upon to collect from receptacles on roadsides where the roads cross the common but it has proved extraordinarily difficult to get litter lifted when it is deposited on a common.

1740. I can imagine it may be difficult to get it done, but is it legally impossible?—I think it is practically impossible, if not legally.

1741. *Sir George Pepler*: Have the local authority any liability?—That is

the problem. They have no liability and it is an act of grace.

1742. Pursuing this question, you talk about a managing body of commoners and of there being a levy. Are you suggesting this body should collect the litter and pay for this out of the proceeds of the levy?—No, but if they had funds it seems to me they would be able to make a contribution to the local authority.

1743. *Mr. Lubbock*: That brings me to your main recommendations regarding the Court Leet, as you describe it. I think you want to see new statutory powers and obligations given to the County Agricultural Executive Committees in the first place.—Yes.

1744. Do you choose them because they happen to be there?—Yes.

1745. If anything happened to the County Agricultural Executive Committees, would you suggest the local authority or an *ad hoc* body should be responsible?—If, for example, certain recommendations of the Arton Wilson Report were implemented and the Agricultural Executive Committees lost their executive powers, we should regret that and if it did happen we should feel that the responsibility, the power and duty of initiative, would lie with the Ministry of Agriculture and should be exercised through their Provincial Land Commissioners, Land Commissioners and County Land Agents.

1746. In fact you would go a bit further and agree that you recommended County Agricultural Executive Committees because you think they are the right sort of body?—Yes, being bodies that could stimulate the formation of commons committees.

1747. If commons committees are formed will they consist entirely of commoners?—Plus the lord of the manor and his agent.

1748. What do you envisage as the relationship between them and the central advisory body you speak of, on which other interests would be represented? What too are the actual means of encouraging and stimulating—as you put it—which could be used?—We felt that if it were put to a collection of farmers who pasture their sheep on a certain fell or common that it was desirable to improve the grazing by liming, manuring, drainage, removal of bracken and other impediments, they would be in

favour, provided agreement and co-operation could be secured, and fairness as between those who would expect to benefit from the improvement was assured. They would be in favour and therefore they might be prepared to co-operate if the scheme were put to them by those who should be, as we see it, the encouragers and stimulators of this new policy.—*Mr. Hopkinson*: It seems to me that it is essential that it be done by making it worth while to co-operate. I do not think you will get your commoners co-operating in the slightest by relying entirely on compulsion from behind. It would require a basis similar to that of the present Hill Farming Scheme if it were to produce much in the way of results.

1749. In other words, no encouragement will produce flocks unless the flocks pay?—That is it.

1750. So that really all through we are talking on the assumption that by some means or other improvement will be an economic proposition. You speak, in the middle of your section on a modern equivalent of the manorial court, about recent informal attempts to establish control, and say that the new courts will not be effective without co-operation, although most commoners would gladly join in a scheme managed by people they can trust. Could you tell us anything about these attempts and why they have failed, if, as it appears, they have failed?—I think perhaps the simple answer is that there have been certain cases where an enthusiastic farmer or commoner on his own initiative has tried to get agreement with the other commoners to do something jointly, quite unofficially. Human nature being what it is, there is always one commoner who will not play and under the present system that one will break the plan up because his sheep will stray.

1751. In the organisation, there will then be the C.A.E.C. on the one hand and the local committees of commoners on the other who will derive their power, and any sanctions they can apply, from the C.A.E.C. Somewhere between them you suggest, do you not, a county committee for commoners?—*Mr. Cleave*: Yes, or regional committee.

1752. What function do you attribute to it?—We felt that each local commons committee would be devoting itself almost exclusively to the agricultural facts of its own situation and would con-

sist entirely of the farmers. Therefore we felt that in order to bring in the other considerations you have already mentioned, public access for example, it would be necessary to have representatives of other bodies concerned, not on each commons committee—that would be unwieldy and difficult—but on the county or regional committee for commons. Perhaps a regional committee would be preferable on which the local planning authority, and perhaps the local amenity organisations concerned, could be represented.

1753. Yourself, for instance?—We might have to find a representative, perhaps the Nature Conservancy, because of the important natural history aspect of our commons, the local planning authority, and certainly the National Parks Commission. Possibly representatives from among the following bodies might also be included: the County Agricultural Executive Committee, the Land Commissioner, River Board, Country Landowners' Association and some representative lords of the manor.

1754. Would the functions of this committee on which the various organisations would be represented, be to recommend to the County Agricultural Executive Committee action which in their view the C.A.E.C. ought to take to control the actions of the commons committee?—Yes, I think that perhaps sounds unduly rigid on the part of the advisory committee, but it could at any rate be empowered to comment on the implications, shall we say, of any agricultural proposals which seemed good to the commons committee, before they are approved by the Agricultural Executive Committee. In particular it would have referred to it proposals by the commons committees which affected access and the wider public interest.

1755. *Sir George Pepler*: You refer to the preservation of trees and things like that—can they not be scheduled?—Yes, but unfortunately, as you know, the power to control tree operations is steadily passing out of the hands of the planning authorities.

1756. *Mrs. Paton*: Although the regional council would be a wider association than the commoners' local committee, would it have the commoners represented on it?—Yes.

1757. *Mr. Floyd*: These committees are going to have power to use money, but where are they going to get it from?—We envisage something on the lines of the Hill Farming grants which would be recommended by the Agricultural Executive Committees.

1758. Would it then be the County Agricultural Executive Committee who would say, you can pay, or you cannot pay for this?—Yes.

1759. *Mr. Lubbock*: Would the local committees also collect whatever levy they decided on from their own members?—There would undoubtedly be a good case for a levy on members. They would derive benefits from an improvement scheme and I think they would therefore be ready to contribute.

1760. Would they work by a majority vote?—*Mr. Hopkinson*: I think that is inevitable.

1761. *Mr. Morris*: Is there some inconsistency in your written evidence on this aspect? In the supplementary evidence you say a majority vote is not valid and yet you now recognise the difficulty of getting unanimity?—The remark about the majority vote not being valid applies under the present circumstances; a mere majority can do nothing, the single objector can hold everything up, and that is the difficulty one has to overcome, if anything is to be done.

1762. *Mr. Lubbock*: Do you suggest that where force has got to be applied, resort should be had to the magistrates courts?—Yes, for breaches of regulations of the commons.

1763. Do you prefer that to any other form of tribunal?—I do not think it would be necessary to have, nor do I think there would be the cases to justify another form of tribunal. One can hardly make the Court Leet the judge in its own cause. It will have to be the prosecutor, for breaches of regulations, and I think it would be entirely proper in this part of the world for them to bring the matter before the magistrates. There would be plenty who would appreciate and understand the problems.

1764. *Sir George Pepler*: Do you know all your commoners here pretty well?—I would not like to say that.

1765. *Mr. Lubbock*: Do you not mention that some have been lost at times?—Yes. The great bulk could be found, even where they are not using their common rights. There are cases where you would have great difficulty in finding out who was entitled to a heaf which has not been used for many years. I think, even where claimants have been lost for many years, they would have to be entitled to a seat if they turned up. But in practice other people's sheep must have been grazing their heaf.

1766. On the whole would the kind of areas you envisage as being controlled by a single Committee not have rights exercised by very many commoners?—No, I do not think so.

1767. Would there be a couple of dozen, or so?—I should think few commons have as many commoners as that.

1768. *Professor Alun Roberts*: May I refer to a paragraph near the end of section IIA of your memorandum, where it is said, 'For economic reasons in fact enclosure is not a solution'. Does that command the acquiescence of the farming community itself? Do you as the Friends of the Lake District speak unanimously and with the acquiescence of the farming community that inclosure is neither possible, nor an economic solution?—*Mr. Cleave*: I am quite sure that we lay no claim to speak for the farming community. This is an expression of opinion, strong opinion, on our part, and we have some familiarity with local conditions of farming; it is our concern and study.

1769. In Merionethshire permission is being given for a community of 39 hill farmers to fence and partition the equivalent of a fell. As, where farming alone is concerned, or primarily concerned, opinion elsewhere of inclosure seems to differ from yours, I wonder what your comment would be?—*Mr. Hopkinson*: I would comment only from the landlord's point of view. From his point of view, where he is called upon to provide any fencing, it is quite definitely uneconomic to do so.

1770. Is it the custom here that the landlord provides fencing? Fencing, in the case I quoted is provided by the parties themselves, the tenants.—The tenant keeps up the existing fences, but if it is a case of a new enclosure fence

the tenant certainly cannot be asked to provide it.

1771. *Mr. Morris*: Is there any peculiar local circumstance which makes the erection of fences, post and wire fences, for instance, much more expensive than in other areas? We have had evidence of quite effective fences at much lower cost than you suggested.—One of the problems is getting material to the site. At the higher contour levels it is sometimes extremely difficult to get it there at all, even with a tractor.—*Mr. Cleave*: I think you will find on your tour tomorrow that, for example, the pattern of roads giving access to our farmlands is very different from what I know from my own small acquaintance with North Wales. One reason, for

example, for the very small number of commoners on any particular common, is that each common is approached on land separated from neighbouring valleys by very high and obstructive ranges of fells. If you go to the road alongside Crummock Water and look over the lake to the hills, I think you will understand immediately, the special problems which contribute in some part to the high cost of fencing—£1 a yard on the top of Melihreak.

1772. *Mr. Lubbock*: Are there any other points you would want to underline or bring out?—I think, Sir, you yourself and the members of the Commission have covered all the points.

Mr. Lubbock: Thank you very much.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by the Earl of Lonsdale, Mr. D. A. Pattinson, Chief Agent and Mr. Q. L. W. Little, Steward of the Manors

General

1. The Earl of Lonsdale by virtue of his life estate in the various properties belonging to the Lowther family, is lord of a number of manors in Westmorland and Cumberland. Examples of these are the Barony of Kendal of which he is lord of the Richmond and Marquis fees comprising some thirteen or more separate Manors. He is also the lord of the Barony of Burgh comprising some four manors in the neighbourhood of Carlisle and of at least twenty-nine other outlying manors in various parts of the two counties. These are all manors in which in 1925 there were some customary tenements not enfranchised prior to the coming into operation of the Law of Property Act, 1922, as amended. There are other manors in the estate in which the tenements had been enfranchised by negotiation and some where there is now no waste by reason of past enclosures. The present extent of the commons in these manors is of the order of 30,000 acres in Westmorland and 15,000 acres in Cumberland. In many cases Lord Lonsdale owns farms in the manors and grants rights to his tenants under their agreements of tenancy to run out sheep on the commons. In his capacity as a farmer he is able to exercise rights of common of pasture on Knipe, Bampton and Askham Commons (near Lowther), and therefore has some practical experience of the matter.

For the most part there were only two classes of manorial tenants, the first being tenants of ancient freeholds not parcel of the manor hut held of the lord by certain services and sometimes subject to certain customs. Secondly, the customary freeholder. These last held of the manor according to the custom of the manor. Properties were conveyed by and with the licence and consent of the lord of the manor and the fee simple did not pass until the document had been presented to the steward. The practice of presenting the documents to the steward was in many ways onerous, hut it was undoubtedly the reason why the system worked. On the one hand there was unrestricted dealing in property hut on the other hand the records were kept up to date and the various owners of properties in the manors from time to time known, and these records were always accessible to the lord, his steward and bailiff, and other persons, including historians. The persons entitled to the appendant common rights were therefore ascertainable.

A waste or a common was almost always a necessary incident of any manor. In these manors almost all the commons are unregulated and the rights mostly appendant. The soil and accordingly the timber are vested in the lord, as is also the case with the mines and minerals and the sporting rights. Freehold tenants had the right to depasture commonable cattle levant and couchant on their tenements anciently arable upon the waste of the manor. One frequently sees property formerly of customary tenure advertised with unlimited rights of pasture on certain commons. There is of course no such thing as an unlimited right. Commonable cattle must either be beasts of the plough such as horses or oxen, or animals which manure the land, such as cows or sheep. Secondly, the number thereof is limited to the number which can be wintered upon the inland. There are other, but less important, common rights.

Until the passing of the 1925 legislation it was the practice of the Earl of Lonsdale by his steward to hold manorial Courts from time to time. Apart from these a great deal of ministerial work was carried out by the steward for the time being in his office. All the stewards were qualified solicitors. The Courts were Courts Baron and Customary Courts. We have never seen reference to a Court Leet, which surely was in origin primarily a Criminal Court. It was the practice to summon as Jurors to these Courts a number of prominent people in the various manors. In addition to the steward the lord also employed a bailiff who collected the rents and generally supervised the districts under his control. The result was a system which had been in existence since feudal times controlled and directed locally by people whose interests were very much in the manor and the waste thereof. On many occasions the interests of the lord and the tenants were in conflict. Largely, we think, because of the very great respect in which both sides held the other, the system worked well without outside help.

One result of the 1925 legislation in this district was to create a void. A certain number of people were saved trouble, but there were and are disadvantages. This is proved by the fact that thirty years after, the problem has become sufficiently important for the setting up of the Royal Commission.

It is suggested that matters will only go from bad to worse if the void created by the abolition of Manorial Courts is not filled. It is strongly felt that the primary reason for the success of the Manorial Courts in modern times was the local control, springing from the great interest that was taken by people who knew and loved the immediate neighbourhood of their homes. The commons can surely be again controlled, and further deterioration prevented, and the use thereof developed in a manner not inconsistent with the aesthetic aspect thereof. It is, however, felt, and past history supports this view, that any modern substitute for the Manorial Court should be largely directed and controlled by the people of the locality concerned. They understand, as few outsiders do, the economic picture, and the part that commons can play in that picture if the best use be made of them.

Agricultural Aspect

2. With the introduction of the Sheep, Hill Cow and Hill Cattle Subsidies and the passing of the Agriculture Act, 1947, with its guaranteed prices, there has been a tendency for the unregulated commons to become overstocked, and it will be appreciated that this has led to disputes, the deterioration of the grazing and an increase of disease. This coupled with the 1925 legislation and the pre-war agricultural depression, has resulted in a decline in the control and management of the commons. It would seem to be in the interests of agriculture that the owner and commoners should co-operate to ensure that the fullest possible use is made of the common rights and that the common is thereby, and in other ways, maintained in good and useful condition. In order to achieve this, and to fill the void created by the demise of the Manorial Court, a Commons Committee should be set up for each common, to include the lord of the manor or his repre-

sentative, and representatives of the commoners, who should draw up rules for regulating the commons, which might include—

1. Assessment and allotting of stints.
2. Grazing rights.
3. Liability for boundary fences.
4. Appointment of a patrol shepherd or herdsman.
5. Marking of sheep and cattle.
6. Improvements to the common.

The Committee should also have powers to levy and collect dues from the commoners.

In order to achieve this on a national basis, it would seem desirable that the Minister of Agriculture, through the Agricultural Executive Committees, should initiate these Committees and be responsible for seeing that they function properly.

There is no doubt that a good deal could be done to improve commons, such as—

1. Drainage.
2. Bracken eradication.
3. Liming.
4. Fertilising.
5. Planting of shelter belts.
6. Reseeding.
7. Installation of cattle grids.
8. Provision of catching pens.

Improvements of this nature should be encouraged by the Minister, as these would increase the stock-carrying capacity of the commons, and make the best possible use of the land—short of inclosing it. Generous grants and subsidies from 75 per cent. to 100 per cent. should be available for this work. There is no doubt that a large increase in food production would result from a more enlightened and controlled commons policy.

Forestry

3. Through experience over a wide area, it has been proved what a great benefit well-placed shelter belts are from the agricultural point of view, and it is felt that powers should be granted to the lord of the manor, with the approval of the Commons Committee, to enclose parts of the common for up to twenty years against sheep, and forty to fifty years against cattle, in order to plant trees. This is most important in this part of the world, where the majority of the commons are treeless. The advantages to be obtained would be as follows—

1. Increased stock-carrying capacity.
2. Shelter and shade. The shelter would certainly reduce the number of casualties to sheep in periods of heavy snow.
3. Early grass, and extension of the grazing season in the autumn.
4. Improvement of the health of the stock by the planting up of tick-infested bracken areas.

Minerals

4. It may be in the national interest that minerals found on a common should be worked. There should be no particular difficulty about the working of minerals, provided the grazing rights are protected. The Commons Committee would have to be consulted beforehand for the purpose of such protection.

Sporting

5. On the majority of the commons under Lord Lonsdale's ownership sporting is of little importance. Due to this, these commons are unkept, with the result that we are now experiencing infestations of carrion crows and foxes. It would therefore seem that where the sporting rights are not exercised by the lord of the

manor it would be desirable to have some form of pest control, which would be in the general interest of agriculture.

Public Access

6. The Law of Property Act, 1925, conferred certain rights upon the public, but these rights are subject to certain provisos. So far as is known no action by the Earl of Lonsdale, his predecessors or the appropriate Minister has been taken to restrict these rights.

It is agreed that the public should have access to the commons in question, provided the aesthetic and economic values thereof are in no way depreciated.

Examination of Witnesses

THE EARL OF LONSDALE, MR. D. A. PATTINSON, MR. Q. L. W. LITTLE and MR. A. W. BINDLOSS.

Called and examined.

1773. *Mr. Lubbock:* We have been most interested in your memorandum, Lord Lonsdale, which you have prepared and sent in, and we welcome the opportunity of discussing it with you.

In some written evidence we have received, it has been suggested that in recent years for various reasons, and with certain exceptions, the lords of the manor have in fact abdicated their traditional responsibilities. We know that is not so in your case but have you any comment on that?—*Lord Lonsdale:* By and large that is fairly true. Even in my own case, due to the fact that there is absolutely no return whatsoever in this day and age for the lord of the manor from commons as they are, and due to the disappearance of the manorial court whereby it was possible to exercise some control over them, it is very largely true that not as much has been done to look after the commons by lords of the manor, or by the commoners, as was certainly the case fifty or a hundred years ago.—*Mr. Little:* I think the reason is that the machinery has gone. It was taken from us in 1925 by the Law of Property Act, and, as Lord Lonsdale's written evidence says, there was a void created which has never been filled. The result was that the lord's responsibility became impossible to fulfil because the whole thing got into confusion. Nobody has any up-to-date knowledge of who are the people entitled to the rights or what has happened on the common, whereas under the old system of course that information was kept up to date from time to time and was always available to everybody concerned.

1774. In the general interest you want, do you not, to see that void filled?—*Lord Lonsdale:* That is correct.

1775. Is there a position for the lord of the manor still—I do not mean in things as they are, but in your idea of what they ought to be?—Certainly there still is. In my written evidence I advocate the restoration of some form of, not necessarily manorial court, but at any rate of a commons committee in which a simple majority of the commoners would be binding on all, instead of the present need for a hundred per cent. unanimity; under those circumstances the lord of the manor, with the essential local knowledge, I consider would have a large part to play. The question regarding the commons committee is who will be in charge of it? It strikes me that the lord of the manor is undoubtedly a ready-made person for the job.

1776. Is he a suitable person to provide the necessary leadership?—He is; he has local knowledge and local interests.

1777. What is he going to get out of it?—As it stands at present he is entitled to the sporting, for what it is worth, which in many cases is nothing. Much more important he is entitled to the growing timber and equally to the minerals that lie under the soil. To be quite frank with you I say that if the commons are controlled and organised, and, as many people advocate, shelter belts with timber can again be grown on them, there is the lord of the manor's interest—my own interest—all ready-made in planting, maintaining and having the ownership of the growing timber.

1778. *Mrs. Paton:* In any case would it give you great satisfaction to see the commons used properly?—It would indeed. In my own personal case I have

a large agricultural estate which I pride myself is fairly well run and productive, and it depresses me to go round and see the commons bordering it in an unproductive, overgrazed, and often disease-ridden state. Turning from my own point of view as a landowner to that of my tenant farmers who have grazing rights on some of the commons, the value of their holdings is reduced to a considerable extent in view of the diseased and overstocked state which many of the commons have got into. Common rights attaching to the farms in my ownership are not worth what they were or what they could be. This factor affects their rental and freehold values.

1779. *Mr. Lubbock*: Do you mean that in many cases commoners would rather not turn out any stock on the commons because of disease difficulties and so on?—Yes.—*Mr. Bindloss*: They are overstocked and it makes the working of the commons most uneasy through people taking advantage of it. I agree that shelter belts would save quite a lot. We get some terrible storms in this part of the world in winter and it would be a great asset to the commons if there were a lot of shelter belts.

1780. To produce shelter belts, would you need to be able to inclose?—Yes. I think it is wicked that the old fences have been allowed to go, even on some of the intakes.

1781. *Sir George Pepler*: Would they be wire fences, or the old stone walls?—The old stone walls. There is one particular wall I know very well. Fifty years since, you could not find a stone off it, but now that wall is down altogether and it would cost £1,000 to put it up. I consider that wicked.

1782. *Mr. Lubbock*: Would proper maintenance have kept it up?—Yes. You can see the same thing all over the country.

1783. *Sir George Pepler*: Why were these stone walls not maintained?—The agents and the landlords did not see that the tenants kept them up.—*Lord Lonsdale*: The point is that the fences round the common were the responsibility of the owners of the land adjoining, and in times gone by the steward of the manor saw that they fulfilled their responsibility.—*Mr. Bindloss* will remember *Mr. Quintin Little's* grandfather every year riding round this particular

wall on behalf of the commoners and then proceeding to bring pressure to bear on the neighbouring land-owners or tenants to keep the boundary wall in order; the particular common we are speaking of is Kentmere which joins Bampton and Barton as well. The commons are now in the hands of Manchester Corporation. The Corporation are very good indeed with their commons, but there is not in general the same interest, the same incentive or drive or anything else. It has just disappeared.—*Mr. Little*: The point, with respect, is that the commons system will never work, we think, unless it is stimulated by purely local interest and that purely local interest will never work unless it has an economic basis.

1784. *Mr. Lubbock*: That is why I asked what the lord of the manor might expect to get out of it. In the economic structure he must have a part, like the others; for the same reason would you feel there must be some personal interest—that it cannot be left to a Ministry?—With respect, the manorial courts worked. We had tenants like *Mr. Bindloss*, men who were very forcible in their views and able, and had no hesitation in disagreeing with the lord if they wanted to. They and the lord had a healthy respect for each other and it worked extremely well.

1785. *Mr. Floyd*: The Law of Property Act, 1925, took away the manorial rights, but would the lordship have ever remained effective when it was divorced from what might be called estate owning? In so many cases the manorial court worked because the lord of the manor was also the owner of a very big estate with his steward of the manor and so on. Now, owing to the break-up of estates in many cases the lord of the manor might be a Corporation or public body or somebody living in Australia, and he is divorced entirely from the ownership of what used to be an entity. We have an exception in Lord Lonsdale who is still a great estate owner in his traditional place; but, taking your district as a whole, would you say the lordships of the manor as known are generally divorced from the estates and landed interests?—Generally speaking, the answer is no, not in this particular neighbourhood. We have no absentee lords of the manor who are not interested in their properties.

1786. *Mr. Lubbock*: In the second paragraph of your memorandum you give a very interesting account of the procedure in the old days when properties were conveyed by and with the licence and consent of the lord of the manor, and when the presentation of documents to the steward resulted in the records being kept up to date. Do you find much knowledge of commoners has been lost in recent times?—The answer must be yes. There is now no centralised body, no one person who collects the necessary information. In the old days it all went to the steward and he kept a record. I think today if there were real local control without the modern pile of sub-committees and committees going up and up, all that would be needed apart from the local organisation would be a body, such as you have here, but sitting permanently. The system will not work, in my opinion, unless there is local control to give it sanction. That local control will give you the knowledge of what is happening from time to time.

1787. Would you suggest that one of the primary functions of the proposed commons committee should be to create and maintain a register?—Without it, I do not see how any scheme can work.

1788. *Sir George Pepler*: Would you put a time limit for people to declare their interest; otherwise they would be excluded?—*Lord Lonsdale*: From the point of view of finding out who are the commoners, I know the problem and how it works in other parts of the country. The instance which always comes to me is Ashdown Forest which I know well, where goodness knows how many commoners there are and who they are. How anybody would find out I cannot imagine. But here with these local commons which are all used to some extent agriculturally, from the parish bordering them, you have only to go to any farmer in the parish and he will tell you for certain who the commoners are, and whether they exercise their rights or not. In many cases one farmer exercises the rights of many people on the common. He either acquired them or borrowed them, or is paying somebody to allow him to use them, so that you might find one common which is perhaps stocked almost entirely by one particular farmer.

1789. *Mr. Morris*: Has that local knowledge any factual support? Is there any documentary evidence of the rights?

Mr. Little: The only persons entitled to the rights of common are either the freehold or the customary tenants of the manor. They are the owners of land in the manor and they are quite easily ascertainable.

1790. *Mrs. Paton*: Would they have documents to bear that out?—They would have their ordinary title deeds to their property. The commoners are the persons who are, or were freehold tenants; in other words the owners of the fee simple on land in the manor in the confines of the parish generally; or the customary tenants who were the owners of the land which was not ancient freehold. They are the only persons, so far as I am aware, who have any common rights at all in Lord Lonsdale's property, and they are easily ascertainable.

1791. *Mr. Lubbock*: Have any voluntary schemes of management been attempted in any of your manors?—*Lord Lonsdale*: Yes.—*Mr. Bindloss*: On Rosgill Moor, the commoners were all brought together, and a local meeting was held at a farm house. They put so much down, each according to their stints, for guttering (or, open drainage). It is just a matter of being in harmony with one another.—*Lord Lonsdale*: There are stinted commons and unregulated commons. Where a common is stinted there are so many stints belonging to each of the commoners and they can be bought, sold and conveyed. On such a common there already is a perfectly adequate system of control in the sense that if the stint holders are active they will appoint somebody to look after their interests. We have only one or two such amongst our many commons, which *Mr. Pattinson* can tell you about. At Hardendale we have had a lot to do lately.—*Mr. Pattinson*: That is one of the stinted ones, a certain number of stints being allotted and a herdsman appointed by a committee to look after stock. They meet say once a year. This herdsman or controlling shepherd is responsible for looking after stock and reporting any irregularities and that sort of thing.

1792. *Mrs. Paton*: Was the money received from the stint holders sufficient to pay the herdsman?—I should imagine that would be so. I do not know that he took much of a wage; he was a local farmer who also had rights and stints, not a full-time herdsman. At Hardendale,

however, we have a certain amount of control, but in the majority of commons there are unlimited rights, unregulated, with no one really taking any great interest in them. The real trouble, I think, on commons to-day is that there has been a lot of overstocking with disputes arising about heaves and so on. Unless we have some form of committee of control I do not see how it is going to be possible to carry out the improvements which are so necessary to increase their stock-carrying capacity and also possibly to undertake planting. All the commons here are very treeless. There is great room, I think, for the planting of shelter belts, and the majority of farmers I meet would welcome that; they all say they would appreciate the value of shelters and would like to see them planted.

1793. *Sir George Pepler*: Would they be prepared to pay their whack?—There would have to be a levy but I think it is a question possibly of doing it on a national basis with, in that case, a maximum grant from the Ministry towards the planting of shelter belts.

1794. *Mr. Lubbock*: You speak of grants further on in your memorandum, but where there was a stinted common committee set up, as you have described it, were contributions levied initially from the commoners on the basis of their stints?—I am not actually familiar with the original setting up of the committee, I am afraid, but I think that was usually the case.

1795. Where there are stints you would have a basis of assessment for contribution, would you not?—Yes. The stint would be five sheep, seven lambs, one horse or one cow and so on. There are various regulations for stocking at certain times of the year with sheep or cattle.

1796. Where there are no stints there is chaos, is there not, and there would be no basis of assessment?—The position normally is—it is purely customary, I think—that the farmer grazes on the common what he can winter on his enclosed land. As to what he may be able to stock, there has been no limit laid down at all, and that has resulted in overstocking in cases.

1797. *Mr. Lubbock*: This leads on to the question of the doctrine of levancy

and couchancy, and its applicability if the land becomes more productive.—

Lord Lonsdale: That, of course, is the whole trouble. One of the main reasons why commons have become so overstocked is that the enclosed lands have become much more productive. Also there has been considerable abuse of the old idea that the in-hye farm can only turn out on the common such stock as it can winter on its own. Many farmers buy bits of land elsewhere, perhaps ten, twelve, or fifteen miles away, and keep their stock there during the winter so they may turn out on to the common twice or three times the number of stock which their own holding, to which the rights of common are attached, can carry. Consequently we get the ridiculous situation arising where somebody who has the money and no particular pride in stock will put as much stock on to a common as he feels like, with the result that the more efficient and better stock-farmers see the common getting absolutely overcrowded and their own sheep getting more and more diseased. It then no longer pays them in the interests of animal husbandry to keep their own sheep on the commons; they take them off and let their own rights go. That process would take a long time—ten or fifteen years maybe, I am not saying it happens in a year or two, or over-night—but it is a general tendency; so it is true to say that a lot of small farmers who in many cases have a right, or had once, but who could only run a very small flock, do not do so now—it does not pay them any more. It is a terrible trouble shepherding and holding their heaves in the face of larger flocks. The sort of thing that happens is that one farmer will assiduously shepherd his flock on an unregulated common but because the next-door commoners do not bother to shepherd their sheep, he will find himself with a lot of other people's sheep on his heaf.

This question of heaf on a common needs explaining, in the sense that the commoners will each have in effect, by custom and usage, a particular patch of common which they can practically speaking call their own, on which their own sheep exist and live. Consequently we get separate flocks all over the common on separate heaves though they do intermix and mingle. Mr. Bindloss, of course, has tremendous experience of

heaving sheep on commons. Even if the number of stock which is put on the common is the number that can be wintered on the holding, yet it may be desirable that the holding should be improved to carry more stock, and it may also be that the stock could nevertheless still exist on the common if something were done to improve that as well.

1798. Would you say one of the first duties of the local committee would be to assess and allot stints fairly?—Yes.

1799. *Professor Alun Roberts*: Are cattle withdrawn temporarily from commons here, as they have been elsewhere, where it is customary to keep a number, because of increasing attestation?—Cumberland and Westmorland are free of T.B. so that there is no animal health or legal reason why cattle should not be put on commons.

1800. Was there a withdrawal temporarily before attestation?—I do not think it has really cropped up to any extent, but I would say very few cattle are put on the commons in this part of the world. There is a tendency now for more cattle to go on the commons because of the emphasis on beef and the encouragement of beef production. I know several commons which have never seen any cattle on them for generations, where people are now putting on Galloway and Highland cattle.

1801. Is there a large proportion of blue moorland molinia grass, the kind of grass which made moorland hay in the old days and has a tremendous growth in May and July?—There is much more in Yorkshire, I suppose. Round Tehay way there is a fair amount of the purely grass commons, but the majority have a good deal of heather, and now, even more, a tremendous amount of bracken.

1802. So really it is true that cattle are more favoured now, that is beef cattle, than before?—Yes.

1803. *Mr. Lubbock*: If the commons could be improved would the cattle increase?—They would no doubt. What would you say, *Mr. Bindloss*? You put cattle on, do you not?—*Mr. Bindloss*: Yes. There is part of our farm which belongs to Manchester Corporation and there might come a time when they will make us keep the cattle off the watershed: if they do that, we will have to

put them on the common. We shall have to have a living somewhere. But I would say it was a good thing to have cattle, but not too many.

1804. *Sir Donald Scott*: Would it definitely improve the commons and get rid of some of the bracken if we could have more cattle?—Yes, definitely. We have, however, no bracken on our farm at present.—*Lord Lonsdale*: While there is no problem of tuberculosis here, as we are fully attested, the greatest har to keeping cattle on the commons, I should think, is the bracken. Nobody really understands bracken poisoning, from what I can make out: we might have several cattle die of it in one year and then a year or two without any. There is a great reluctance on the part of people to put cattle on commons where there is a tremendous amount of bracken. Bracken covered areas, of course, will grow any amount of trees, for one can always say that where there is bracken there is soil, but unless the bracken is either crushed or destroyed in some way or other, or the area planted with trees, there will always be reluctance to put a lot of cattle on a bracken covered common because of the danger of poisoning. The vast spread of bracken in the last three decades is due to overgrazing of sheep, without cattle.

1805. *Professor Alun Roberts*: Is the wether sheep on the upgrade here?—*Mr. Bindloss*: I am afraid it is not. In the grading last autumn they made a very poor grade. With the Ministry downgrading wether sheep they are going to go out.

1806. In keeping the boundary of individual heaves, would you agree that it was a priceless asset?—Yes, it was all right was the wether sheep. If there were any other sheep encroaching on the heaf—the sheep from over the watershed—we would gather them up and put out both the wether lambs and the ewe lambs and they would go to the heaf and hold that corner.

1807. With improved wool prices, is not the wether coming back into favour?—No, I am afraid they are going off are the wethers.

1808. *Mr. Lubbock*: In the second part of your memorandum you set out some things to be done to improve the commons; drainage, bracken eradication, liming, and so forth, which you say should be encouraged by the Minister

with generous grants and subsidies. 'Provision of catching pens'—what does that signify?—*Lord Lonsdale*: That is quite a small thing. It means that when the sheep are collected from the common to be clipped and dipped and so on, your flock of sheep inevitably arrives with other people's sheep in it. You normally take them down to your farm which might be a mile or two off the common to sort them out. You then take the other fellow's sheep back and turn them out on the common again, except at certain times of the year when there are definite shepherds' meets where other people's sheep which are driven together are sorted out. But if you have your catching pen at the gate on to the common—it might cost a £100 or so—you can do all the sorting out of the sheep on the common and save time and effort.

1809. *Mr. Floyd*: If when you come to dip your sheep you have other people's sheep among them is it the local custom to dip the others, or do you send them back to the common?—*Mr. Bindloss*: It varies in different districts. My family came to Kentmere twenty years ago and we always found the odd sheep coming in like that which had not been dipped. We used to dip them so they did not get missed, but that was just our local custom; otherwise we used to sort them out and get them to their homes.

1810. I asked that question because we have heard a little about disease on the commons. There is the question of the T.B. cattle and the clean cattle, which has already been mentioned but I wondered about the problem of sheep disease. Is there any?—*Yes, fluke and scab*. We are clear of scab just now in Westmoreland. It is very essential that the old sheep should be dipped for scab. New dips have come out and have done away with it.—*Lord Lonsdale*: From the point of view of stocking I think fluke is the main trouble. When you get a tremendous stocking and commons get full of fluke, it is a question of dosing and dosing over and over again.—*Mr. Pattinson*: We also get a lot of bracken tick which makes the sheep unthrifty. *Mr. Bindloss*: There are a lot more of those diseases now than there used to be. Fifty or sixty years ago there was not much fluke that I remember.

1811. *Mr. Morris*: Assuming that collective action by the commoners was possible, is there a considerable potential

for reseeded and improvement in that way?—*Lord Lonsdale*: I should be against reseeded over any hut selected patches. As regards the question of improvements, drainage is the most important one, and liming perhaps as important. The trouble with any improvement is that in improving part of the common, you might be improving somebody's specific heaf. That particular part of the common will then draw the sheep from all other parts: so any scheme of improvement has to be a comprehensive one for the improvement of the whole common in one or two years, otherwise it will upset the whole balance of the common. Because it would therefore mean sudden and large expense within one or two years for the commoners or anybody else involved in a comprehensive scheme of improvement, I advocate considerable grants. Only thus can the improvement be done in one or two years and consequently be worth while in value. Basically, drainage, liming and the application of phosphates (basic slag) are the three things which could be done—not easily, because nothing is easy in these rough areas, but reasonably economically. The planting of trees and shelter belts is another question altogether.

1812. *Mr. Lubbock*: Given financial resources could these kinds of improvements be carried out in practice so nearly simultaneously as to be effective?—*Yes*.

1813. And without temporary fencing?—*Yes*. *Mr. Bindloss* farms several thousand acres of land which is similar to common but in fact is freehold fell land. You have done a good deal of drainage, have you not?—*Mr. Bindloss*: Yes, that is what keeps us poor. We paid £500 one year for open gutting and £300 another year.—*Lord Lonsdale*: I was talking to another commoner at Raliland Common yesterday, where there are not many commoners—a dozen at the outside, and nearly all one family. This commoner expressed the opinion that if he could have a hundred acres of Raliland Common to inclose he could make something of it. I am not advocating inclosure because of the history of commons and their open space value; I would never advocate it, however useful it might be for agricultural requirements.

1814. *Mr. Floyd*: Would you be against temporary fencing for local re-seeding?—No, I would be in favour of that, or for shelter belts.

1815. *Sir George Pepler*: You said that parts of some commons are not worth spending money on, and if you spend money on the other parts, all the sheep will go there. Would not this create great difficulties?—One of the chief reasons is that a part not worth doing very much about would be a very rocky part, and would not hold much stock anyway. Suppose you take three or four thousand acres and only find a thousand acres improvable, that particular thousand acres could not hold all the stock running on the whole common anyway. There is bound to be some confusion about this but, given a reasonable amount of good will on the part of the commoners, a scheme should work.—*Mr. Little*: Surely it could be adjusted, if you adopt the principle of stinting to improve the capacity of the common, which is what stinting is for.

1816. *Mr. Floyd*: Are the high rocky portions of the commons of value? Do the sheep go up high or mostly stay on the grazing?—*Mr. Bindloss*: They like to go high. They will climb up where there is a sweeter bite.

1817. *Mr. Lubbock*: Do I understand from your memorandum that you do not see much difficulty regarding the question of public access and the benefit to the public at large?—*Lord Lonsdale*: None. Under the existing law the commons in fact are very much the same as inclosed lands. Whilst public foot-paths cannot be designated on them as on inclosed land, they are customarily used by the public. Equally with the parking of caravans on commons—whether or not it is a good thing is a matter for discussion—the parking of motor cars and vehicles is controlled by various laws.—*Mr. Little*: De facto, long before 1925, the access of the public to the local commons was as complete as the public wanted it. Since the 1925 Act it has not altered at all. Where can it be said that anything we are talking about or suggesting can affect the public interest in any shape or form? They always had de facto access to the commons.

1818. *Sir George Pepler*: They did not have access of caravans did they?

—*Lord Lonsdale*: They only have now by default of the law.

1819. *Mr. Lubbock*: Did the 1925 Act not affect the commons in the urban districts?—*Mr. Little*: It affected all of them, but it is so riddled with various provisos that it in fact confers very little right at all on the public, except to transfer to them in law what they already had in fact.

1820. You said you would never favour legal inclosure of the commons because you believe in the desirability on general grounds of maintaining them. Do you suggest, quite apart from general grounds of that sort, that it might on sheer economic considerations be the right policy in some cases?—I cannot see that with many of our commons here in Westmorland and Cumberland that I know of it would be an economic proposition to do so. When I came in I heard the previous witnesses (The Friends of the Lake District) talking about fencing by the roadside and so on. Even that does not strike me as being an economic possibility. You have heard how all the fences round the edges of the commons are falling down. The basic reason is the cost of keeping them in repair. If it was worth somebody's while to keep them in repair that would be done.

1821. *Mr. Floyd*: Would it be true to say that in the Lake District most of the roads used by the buses and so on follow the valleys where they go through inclosed land, and so where you have the greatest traffic you have roadside walls. If you take districts in Wales for example, they go completely straight across commons.—That is very true.

1822. And for a great deal of their length those roads really need to be fenced?—That is also very true. I drove across New Forest for the first time in my life the other day, and was thoroughly scared by straying animals.

1823. *Professor Alun Roberts*: Would you agree that the condition of hill farming warrants inclosure to-day just as inclosure of arable land was justified in the 18th and 19th centuries?—No, I would not agree. The commons for agriculture in this part of the world serve a very definite purpose in the sense that one can turn out on them the number of sheep and cattle appropriate to the number one can winter inside. Thus the

better you farm your farm, as you heard, the more, theoretically, you can turn out.

1824. But we have heard that the difficulty is of improving the open fell unless it is done at one point in time, covering a whole area. That was equally true in the 18th and 19th centuries for the arable land and the answer then was to parcel it out individually.—I think it is because all that is left is the residual land. What was inclosed in the 18th and early 19th centuries was land which would have repaid considerable expenditure. There is no point in inclosing land now because it is economically not worth it.

1825. *Mr. Lubbock*: In other places we have found instances where that process had not fully taken place and the inclosure had not gone up to the limits of economic reward; would you say, broadly speaking, that here it has?—*Lord Lonsdale*: Yes.—*Mr. Little*: Certainly that would be my view.—*Mr. Pattinson*: I would agree.

1826. *Professor Alun Roberts*: What were the inclosures in the past in this area?—*Mr. Little*: There are in this part of the world what are known as the ancient inclosures. They were of course inclosures which took place long before any Inclosure Act found its place on the Statute Book. Subsequently there were other inclosures; and if any part of the

present commons belonging to Lord Lonsdale and his family had justified inclosure—I say it with the greatest possible respect—it would have been inclosed within the last few generations. His family never did anything other than help the course of agriculture.—*Lord Lonsdale*: I will agree that you can look at many commons and see, slap in the middle of a common, a green field, a green patch of perhaps five or six acres or perhaps a hundred acres. It does illustrate what a common is capable of doing, but if you go and study it and look at the particular field you will find that, painstakingly over the generations, someone has picked the stones off so that they can till it. Whilst I agree that the commons, given the full treatment, could be as good as many other upland inclosed lands, the full treatment is nowadays so expensive that it is not an economic proposition. By full treatment I mean land clearance and suchlike.—*Mr. Bindloss*: Before you conclude, may I say in my opinion there can be nothing better than planting a lot of shelter belts to save the lives of stock on our commons, and to make them more productive. There is no production in a drove of sheep if they are at the back of a wall smothered with snow.

Mr. Lubbock: Thank you very much, Lord Lonsdale, and you gentlemen, for the most interesting discussion.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by Mr. J. Edwards

SHELTER BELTS ON COMMON LAND

It may be of some assistance to the Royal Commission if I give some information concerning the position as I have found it in north Westmorland. In doing so I should explain that what I have to say is drawn from my own experience as a forester in this district during the past eighteen years, and that it does not necessarily represent the views or policy of the people by whom I am employed.

The ground to which I refer extends to about 23,000 acres, of which 14,500 is common land. The Manchester Corporation own the freehold of the land subject to rights of common. It lies at an altitude of from 700 to 2,000 feet. The vegetation is grass, bracken, and heather, and its chief use is sheep grazing. Tree growth is almost non-existent. During the very severe winter of 1947, losses in sheep could only be described as calamitous, for in one valley alone about 3,000 sheep died of exposure and starvation. Had there been trees or shelter belts, there is no doubt

that thousands would have been saved, but one can look in any direction for miles and not see a tree.

The following is a true story which indicates the scarcity of trees in these parts. A shepherd, named Sutherland, and his family of wife and two daughters, occupied a small house in the valley of Mosedale. The children lived there until the eldest reached the age of 5 years, when it became necessary to move them to the village of Shap, where they could live with their grandmother and attend school. When the children moved to Shap, this was the first time in their lives that they had seen a tree. The farmer who told me this said they were quite terrified and wanted to return to the cottage.

After the experience of the 1947 winter many farmers were anxious to have shelter belts planted. Since then a number have been established on *enclosed land*, but despite efforts made the local Agricultural Executive Committee could not agree to the enclosing of *common land* for a period of more than 3 years. It appears that as the law stands, that even if application were to be made to the Minister of Agriculture for his consent to erect fences on common land, the procedure would be long and expensive and not necessarily likely to succeed.

Since 1947 we have established eight shelter belts on 'enclosed' land, varying in size from one to nine acres. This 'enclosed' land is similar in type to the 'common' land adjoining. The plantations are formed at altitudes of from 900 to 1,650 feet, primarily for shelter for sheep, but there are also possibilities for timber growth. The Manchester Corporation have borne the cost of forming the shelter belts, but tenants have assisted by sledging fencing materials up to the sites. At our most isolated position in Mosedale, our costs per acre, despite the fact that we had to erect a 6 feet high pressure creosoted deer fence, were £59 10s. 11d. In the five years since it was planted it has cost us about £20 more per acre in plant cleaning and fence repairs. Fence repairs are heavy because of snow. These costs do not include overheads. The plantation is now practically established. Species generally used are Mountain Pine, (on border 4/6 rows), Scots Pine, Sitka Spruce, European and Japanese Larch, and where possible, Sycamore and Beech.

The enclosed photographs* are of a shelter belt planted in April, 1950, at Tewsett Pike, Shap, altitude 1,135 feet, which is just above Shap "Summit" the highest point which British Railways reach in England—the railway can be seen in one of the photographs. The photographs were taken on 26th February last, for the purpose of showing the amount of growth which has taken place in six years. Many people think it is not worth planting trees at this altitude as they will not afford shelter in their lifetime, but it will be seen from the height of the fence—3 ft. 6 in.—and myself in one photograph—that in a short time they will give shelter. To one unfamiliar with the district the photographs may not appear impressive, but I have endeavoured to show—not very successfully I'm afraid—that the shelter belt is planted on a ridge on this high tableland, incidentally where two tenants will benefit from the shelter. The growth possible at 1,100 feet in six years is I think interesting.

An objection which one farmer advanced against shelter belts was that should a shelter belt be established on the part of the common near his farm, that in a severe storm other people's sheep would crowd in to take advantage of his shelter, and thereby reduce his grazing. I pointed out that this should be an argument for more shelter belts, not less.

There is one other suggestion which I should like to make to the Commission with regard to the planting of trees, and that is as 'snow-breaks', where exposed public roads pass through common land. Public authorities pay many thousands of pounds on clearance of snow, and the planting of windbreaks to within 30 yards of main roads would hold snow in position and minimise drifting.

* Not appended. The trees shown on the photographs are up to 5-6 ft. in height.

Examination of Witness

MR. J. EDWARDS.

Called and examined.

1827. *Mr. Lubbock:* Mr. Edwards, we are very grateful to you for your most interesting paper, and for giving us the benefit of your unrivalled experience of afforestation. First, I believe you say the shelter belts which you have established vary in size from one to nine acres?—*Mr. Edwards:* Yes.

1828. Can you give an assessment of what their economic return would be if it was policy to plant them more extensively in this country?—It would depend of course on the elevation. At 1,650 feet—that is at the highest altitude at which we have planted—the economic return from timber would be very little. If they were at 900 to 1,100 feet, one would expect an economic return in timber, as well as the shelter. I am quite sure of that from my experience of other woodlands, not only in Cumberland and Westmorland, but in other counties and in Scotland and Wales. From the point of view of belts that might be established on commons for the purpose of shelter, I should say in the main they should be planted at from 1,100 feet to perhaps 1,500 feet and that the economic return from timber would be very little except perhaps for firewood and stakes, but in winter they would be of definite benefit for sheep. I say that because I have had experience in the last few years of the effect of intensely cold winters. I have not experienced the Greenland Icecap, but I should think it could not be worse than the winter of 1946-47 when the sheep died of exposure. I asked a man the other day how many sheep he lost in 1947. He said 'three-quarters'. 'Three-quarters of what?' I asked him, and he replied 'I had about 450 and lost 375'. Another man who had 2,000 sheep lost 800, but that same man lost 300 again in 1951. Whenever there is a storm, you find the sheep moving down to the shelter. Down they go one behind the other, till they get to it. The man who had three-quarters of his flock destroyed said they were all lying dead together and he could hardly step on the ground without stepping on the sheep. They had made their way to the bottom of the valley near the beck. If you had seen, as I have, heaps of them dead, then you would realise something must be done if these uplands are not to become completely sterile. I was very glad to hear Mr. Bindloss, one of the previous witnesses, say that he is in

favour of shelter belts. When the shelter belt is established the sheep move into that area and eat the grass closer. There is a sweeter bite there and that would occur, I am quite certain, on every side of the plantation. Of course, sheep possibly come in from other areas, but I do think it would improve the grazing in the immediate vicinity of the shelter, and for many acres around.

1829. *Mr. Floyd:* The traditional shelter belt is very often an oblong block, perhaps 80 yards wide or so. Have you had experience of planting, say, round clumps for shelter? I am not thinking of timber production, but purely of shelter. Some people suggest that what is wanted is not a straight oblong because, they say, it will only give protection on one side. Have you had experience of either rounded or odd-shaped clumps, in addition to straight belts?—I have been responsible for establishing both the 'L' and the 'T' shaped belt. It is so much easier and better in erecting your fences for shelter belts to have straight lines.

We are opposed to straight lines from the amenity standpoint, but if the fence is made rectangular it does not necessarily follow that the plantation should take the same form. In Mosedale we have a rectangular fence, but have curved the planting round in the angles and this plantation seen from the air is oval in shape.

I have had experience in planting in ravines or dells and there are many good examples of that kind in Cumberland. Very often they are planted nearer the farmstead, but on the hill side when establishing a new plantation it is important from the commencement to have the fences straight, because only when you have your wire strained from straining post to straining post can it be kept tight. While I am in favour of straight fences, I am not in favour of straight planting, and where we have had a long rectangular shelter belt we have put an access diagonally through it. The access ought not to be straight, it should be diagonal.

1830. For what purpose?—Sheep might get trapped, coming down from the fell. They might want to get through the plantation, as it were, and if it was a long belt, this gives them a passageway or access. This does mean an extra expense in fencing, but the diagonal ride

through the plantation gives also more shelter, for by and by, as the trees grow, they fill up the dividing ride, yet leave a passage-way for sheep.

1831. Would you consider, if shelter belts were established on the hills, that their thinnings would help with the fencing problem, or would you say they probably would be so windblown that fencing stakes would be cheaper from forests?—No, I would not say they were useless because, on an estate I am on now, we use timber which, although it has been planted in an exposed position—in 1908—and are what we call dwarf trees—'scroggs' locally—all material can be utilised. Of course the shelter belt might be rather remote and there is the problem of extraction, but I should think it would pay the farmer.

1832. *Mr. Lubbock*: You talk about establishing a shelter belt on enclosed common land. Have you any knowledge of shelter belts being successfully established under a Hill Farming scheme on private land?—No, I have not. My employers have not participated in any. Any planting that has been done has been on enclosed land of which they have borne the cost.

1833. *Sir George Pepler*: Are all your shelter belts quick growing? Are they bound to be softwood?—We have found sycamore and beech can be introduced up to 1,100 feet, provided there is no air pollution. Generally, the wise thing in high altitude planting is first of all to establish a margin of mountain and Scots pine, and a few beeches in the hope that they will grow. My experience has been that above 1,100 feet you do not get beech to grow successfully, or sycamore, but we do nevertheless include them and birch. Birch is quite hardy and does very well. I have included them right up to 1,650 feet but hardwoods are disappointing at that height because they are frost-tender, and in high areas they get damaged by frost easily. The Scots and mountain pine make all their growth in about a month, and the rest of the season they are ripening off.

1834. In your planting have you considered the landscape, how best to fit all these shelter belts and so on in it?—Yes, always. We are blamed for 'blanketing the fells with conifers goose stepping to the skyline', but there is a

saying 'Red hair and hardwoods will not grow on shallow soil'. We think of amenity, and of hardwoods, but we do not plant pure hardwoods if we find that the soil is not suitable. Where we find it is at all possible to improve the shape, we do so.

1835. *Mr. Floyd*: Is the employment in the Manchester Corporation forest all whole-time in forestry or do you have a certain number of people working part-time shepherding and so on?—Our men are employed whole-time in the forests.

1836. It has been suggested to us that the cost of fencing is very high in this district. In your experience, what would a mile of fencing of the cheapest sort cost?—We keep records of shelter belt planting and we have found of course that we have had to erect sheep, rabbit, stock or deer fences. In the case of sheep fences our costs have been, say, 4s. 3½d. per yard, including labour. I ought to mention that we have had the co-operation of the farmer or the tenant in taking the material on to the site, which means a big difference. I ought also to mention that our material is pressure creosoted and is there to stay. We have posts in our fences now which were put in in 1910, and are as sound today as when they were put in.

1837. *Mr. Lubbock*: What are they?—Mostly Scots pine—pressure creosoted.

1838. *Sir George Pepler*: What about the wire?—In many cases it has to be renewed. I had one fence erected in 1910 where the wire is rusty but the posts are sound as can be. The cost of deer fencing, 6 feet high with seven wires, was 4s. 11d. per yard on one site in 1951. That was without wire netting but included transport of materials. Last year a deer fence on another site with wire netting cost 5s. 8d. per yard, excluding transport.

1839. *Mr. Morris*: Could you put an estimate on the life of the wire?—For wire netting, eight, ten, or fifteen years even; on the very tops a little less, an average of ten years. A plain No. 8 wire would last thirteen or fourteen years. In Lancashire where you have the effect of air pollution, wire netting will hardly last three years.

1840. *Mr. Lubbock*: Is there anything else you would like to add?—I would just say that in my early days of course there was no Forestry Commission. Manchester as usual led the country. We were planting in 1908. Nowadays we do rely a great deal on the Forestry Commission for the evidence of their research. They are conducting research at the present time on the shores of Loch Long to find out what effect shelter belts have on sheep farming, and that I think would be useful to your Commission.

1841. *Mr. Floyd*: You put the price for sheep fencing at 4s. 3½d. per yard excluding transport up the hill, and 4s. 11d. for deer fencing. You did not say anything about rabbit fencing. Generally speaking, if you had to put it up, what would that cost now?—My 4s. 3½d. included labour, posts and netting, but not the cost of transport. The cost of transporting the material depends on the accessibility of the place.

Mr. Lubbock: Thank you very much, Mr. Edwards.

(The witness withdrew.)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

13

Wednesday, 17th October, 1956

WITNESSES

The Malvern Hills Conservators
The Malvern Urban District Council
The Clent Hill Common Conservators
Major L. Montague Harris



LONDON

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1956

THREE SHILLINGS NET

List of Witnesses

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Surveyor

on behalf of the Clent Hill Common Conservators.

MAJOR L. MONTAGUE HARRIS

Solicitor to the Chipping Sodbury Commoners and the Chipping Sodbury Town Trust

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at the Guildhall, Gloucester

Wednesday, 17th October, 1956

Present:

MR. ALAN LUBBOCK, J.P., D.L.

in the Chair

MR. C. ARNOLD-BAKER

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

PROFESSOR ALUN ROBERTS, Ph.D.

DR. W. G. HOSKINS, Ph.D.

SIR DONALD SCOTT

MRS. F. B. PATON, J.P.

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence Submitted by the Malvern Hills Conservators

The Malvern Hills Conservators are a Statutory Authority and under four Acts of Parliament of 1884, 1909, 1924 and 1930 they have jurisdiction over the Malvern Hills. As stated in the Preamble of the Act of 1884 the Forest or Chase of Malvern was disafforested and one-third was allotted to the King and the remaining two-thirds to the commoners. Owing chiefly to encroachments by squatters and others the Act of 1884 was passed to protect the hills and commons from further enclosures and encroachments. The commoners rights as individual commoners have not been defined and that is the position in 1956. The Malvern Hills Conservators have had numerous and serious complaints as to sheep trespassing from the hills into private gardens and although the Malvern Hills Conservators have no jurisdiction as to sheep off the hills, they are having meetings with the commoners to try and make an amicable arrangement as to marking of sheep, etc. Sections 10 (1) (f) and 10 (2) of the 1930 Act preserve the rights of the commoners. The Malvern Hills Conservators have had recent correspondence with the Minister of Agriculture and Fisheries and a copy of my letter of 24th August, 1955, and of their reply of 31st August, 1955, is at Appendix I. The Malvern Hills Conservators have statutory powers of levying a maximum rate of 6d. in the £ and their accounts are subject to audit under the Commissioners Clauses Act. The area of the commons and land under the jurisdiction of the Board is approximately 1,600 acres and it will be seen that as their main object is to prevent enclosures and encroachments for which they have statutory powers they would strongly object to any building on the commons owing to the value of grazing and their amenity value nationally.

The Conservators would add they feel strongly that in view of the constitution of the Board as explained above and that as the Board is composed of local residents elected from the various places surrounding the hills they are in a unique position to maintain the hills, commons and other portions of land under their control and do so with regard to the various interests involved namely the commoners, those who value the amenities and beauties for walking etc., and the various councils of the surrounding parishes. The Conservators regard their duties as a trust and believe they are in a good position to carry them out but they consider it essential to have

larger powers to control and direct the use of areas of common land and common rights. To bring this about it is first necessary that commoner's rights and responsibilities of pasture should be clearly defined.

It is suggested that owing to the tremendous increase in motor traffic the position in regard to powers of fencing of common lands should be reviewed.

Appendix I

MALVERN HILLS CONSERVATORS

24th August, 1955.

DEAR SIR,

The Malvern Hills Conservators have jurisdiction over the Malvern Hills under their Acts of 1884, 1909, 1924 and 1930 and Byelaws. They have been much concerned lately with regard to the sheep on the Hills and the commonable rights which are not defined and the matter has achieved publicity because of the sheep wandering from the hills into private gardens and doing damage.

I informed the Conservators that when the sheep were off the Hills they were in no way under their jurisdiction or control and any damage they did would be subject to a private claim by the person suffering the damage.

I see in 1911 the previous Clerk had a good deal of correspondence with you, but nothing was able to be done, because your Board at that time entertained serious doubts as to the possibility of submitting to Parliament a Provisional Order dealing with the area, or any part of the area, under the jurisdiction of the Malvern Hills Conservators. Consequently, the matter was taken up with you again in March, 1921, and you wrote us on the 23rd March, 1921, reference L.G. 515/1921 in which you stated (*inter alia*) in the last paragraph of your letter:—

'I am to add that the matter appears to be one which can only be dealt with by special legislation.'

I have advised my Board that there has been no change in the circumstances since your last letter, but I should be glad if you could kindly help me and confirm my advice as the matter of the Commons and Commonable rights seems to be very complicated all over the country.

Yours faithfully,

(Sgd.) H. H. FOSTER,

Clerk.

Secretary,

Ministry of Agriculture and Fisheries,
55, Whitehall,
London, S.W.1.

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD

31st August, 1955.

DEAR SIR,

Malvern Hills

With reference to your letter of 24th August referring to correspondence with the Department in March, 1921, on the possible regulation of rights of common on Malvern Hills, we agree that there has been no material change in the position since that time.

You may, however, be interested to know that because of the unsatisfactory state of the law relating to commons, the Government has announced an intention to appoint a Royal Commission to consider the necessary changes. No doubt a further announcement will be made later in the year.

Yours faithfully,

(Sgd.) L. A. FREEMAN.

H. H. FOSTER, Esq.,

Clerk,

Malvern Hills Conservators,

Belle Vue Chambers, Belle Vue Terrace,

Malvern.

Examination of Witnesses

MR. T. COOK, MR. H. A. E. PEARCE, MR. A. BALLARD, MR. N. J. MAISEY, MR. H. H. FOSTER and MR. G. H. CLARE on behalf of the Malvern Hills Conservators.

Called and Examined

1842. *Mr. Lubbock*: The Royal Commission on Common Land is very happy to be in Gloucester. Though we are meeting here, most of our evidence this morning will not actually be from Gloucestershire, but from Worcestershire. That does not mean that we are in any sense neglecting Gloucestershire. In addition to the evidence which we shall hear this morning, we are going to spend a considerable time visiting some of the commons in the county this afternoon. The first evidence, however, is from the Malvern Hills Conservators.—*Mr. Cook*: May I welcome you to the Midlands, on behalf of the people of Worcestershire. Mr. H. H. Foster, our legal adviser, Mr. G. H. Clare, our new Clerk, and Mr. Maisey, a member of the Conservators are on my left. On my right are Mr. Pearce, the Vice-Chairman, and Mr. A. Ballard, a member of the Conservators. Mr. Foster will be able to go through some of the legal technicalities about our hills, which I think will be helpful to you. He has spent 37 years with us as Clerk and has recently retired.

1843. You have presented us with a very interesting memorandum, which we have all studied. We should like to ask you some questions to clarify some points arising from it. We shall also be glad to hear anything you wish to say in

amplification.—I would like to call on Mr. Foster.—*Mr. Foster*: This is such a vast subject that I should like to confine myself, really, to presenting information. I take it you would like to know the answers to certain questions, as set out in a letter of 12th October to me from your Secretary?

1844. Yes, as you please.—The first question is: 'Do the Conservators now own the whole area of the Malvern Hills and the mineral rights, or are there other owners still remaining, who have not been bought out?' The area of that part of the Malvern Hills subject to the Malvern Hills Acts is approximately 1,600 acres lying in Worcestershire and Herefordshire. Of these 1,600 acres the Conservators actually own about 1,013 acres, and 587 acres are in the ownership of other people, including the Malvern Council, but the whole area of 1,600 acres is subject to the Malvern Hills Acts, irrespective of ownership. There are about 920 acres of hill land. These 920 acres are, of course, common land, but in addition there are 680 acres of common and wayside waste which are more or less flat. The hills running south of the Herefordshire Beacon are not under the Conservators' jurisdiction. Certain areas at the northern end of the Range are also not under our jurisdiction. I believe they will be brought

in under the National Parks Act—I think under Section 87—as an area of outstanding natural beauty.

1845. That would have no bearing, though, on the function of the Conservators would it?—No. The next question was: 'Would the Conservators recount very briefly the course of events which made their four private Acts of Parliament necessary?' That is a very wide and long question. We go back to Charles I.

1846. I do not think we need trouble you to go very deeply into the earlier history, but four private Acts seem rather a lot of legislation in the half century from 1884 to 1930.—In the 17th century legislation was passed to protect the commoners as to two-thirds, of the Hills and the other one-third was given to the King. By 1884 however there was continual trouble with encroachments and squatters. Even after the protection of the 1884 Act had been obtained we had quarrying with modern machinery. Really, our main fight has been with the quarry people, in order to preserve the hills. They had legal rights to quarry, and we wanted to get rid of them. We still do today, but of course finance enters into it. Under the 1924 Act, we limited quarrying in the north Malvern area to 22 acres, preserving 65 acres from quarrying. The third question was: 'Are the Conservators satisfied with the present situation, whereby any amendment in powers necessitates a further private Act of Parliament, with the consequent expense?' We are not satisfied. We want more money for administering the hills. But it is rather a wide question whether there should be national or local legislation, and of course it is a matter which your Commission will no doubt wish to consider?

1847. But is the financial worry your chief one?—It is one worry, but another worry is the need to control the commons under some scheme. That crops up in another question: 'How do the Conservators interpret their responsibility under Section 21 of the 1924 Act, to preserve as far as possible the natural aspect of the Malvern Hills?' We simply seek to preserve them as they are—we are bound to, under our Acts. The fifth question was: 'Does the Board encourage the commoners to use their grazing rights, and what is their attitude

to the commoners, generally?' We do not stop people grazing. Our attitude is passive. We do not go to them and say: 'You must not use that piece of common for sheep or anything like that'; our whole difficulty however centres round the question of regulating the common by having some scheme. We have tried to do it in the past through the Ministry of Agriculture, but they said we could not get a Provisional Order—it is in the correspondence of which you have copies—and that is the position today. Regarding another question: 'Has a register of commoners ever been attempted?', the answer is, yes, recently. We have not got a full register, but we are in touch with commoners and their committee, who have their own solicitor. We meet frequently, but nothing definite has been arranged up to now. With regard to commons on the Malvern Hills, you might possibly ask: 'What are the rights of commoners?' The answer is that I, frankly, do not know. It goes back to disafforestation, when 13 parishes had the right of common, and as far as I know they have it today within Malvern Chase. It is set out in Mr. Birkett's history of the Hills but it is too long to quote from.

1848. Have the commoners' rights never been defined?—Never; they should be.

1849. Do you know how many there are?—We do not.

1850. Can you give an estimate?—There are, we think, about 40 to 50 using rights.

1851. Those are active users?—Yes.

1852. Thank you very much, Mr. Foster. Mr. Cook, is there anything you would like to add?—*Mr. Cook*: No thank you.

1853. *Professor Stamp*: Could I ask what is meant by the phrase: 'The Malvern Hills Conservators have jurisdiction over the Malvern Hills'? Does that mean jurisdiction of the same character as the lord of the manor's?—*Mr. Foster*: Partly, but of course our powers are defined in the four Acts of Parliament, and we operate through them.

1854. Do the powers which you have include the powers and rights of the lord of the manor?—Yes, as regards that part of the Hills acquired from lords of the manor and subject, of course, to our Acts of Parliament.

1855. How were those rights acquired from the lords of the manors?—One was by purchase. We purchased the Foley estate, and that included the manor.

1856. Did not that purchase of the rights of the lord of the manor include the mineral rights?—Yes, subject to existing licences to quarry.

1857. *Sir George Pepler*: Who had the right?—The lord of the manor. One-third was given to the King and then, subsequently, to the lords of the manor, and two-thirds to the commoners.

1858. *Mrs. Paton*: And when the rights were purchased, did the right of quarrying remain with the former lord of the manor?—No. Some of the quarry rights exist today under licences terminating in 1960. We bought out the quarrying rights on the west of the hills, and paid £25,000, I think, for them. The only working quarries existing on lands subject to the Hills Acts are the Pyx Quarries in the north Malvern area.

1859. *Sir George Pepler*: As successor to the lords of the manor, were not the quarrying rights yours? You would not have to purchase them, would you, or were they excluded when you took over the rights of the lords of the manor?—They had to be excluded to some extent, because there were existing licences, the Pyx, for instance. That is the chief worry at the north end. The quarrying there is now limited to 22 acres, (except a freehold quarry owned by the Pyx), in accordance with the Parliamentary bargain made in the 1924 Act.

1860. Did the Act extinguish part of the lease?—Yes, but in 1960 the licences fall in, so that would end the quarrying in these particular quarries, we presume. But it will now be mixed up with Town and Country Planning, and I suppose there would need to be some application on that count. As a matter of fact, there is a law suit in the Chancery Division at the moment between the Pyx Company and the Worcester County Council and the Ministry, as to quarrying rights. But the Conservators are not parties to that; they are only interested.

1861. *Professor Stamp*: Do the Conservators not get any income from the mineral rights, which were presumably leased by the lord of the manor?—

Yes, we do get a royalty in respect of one quarry from the Pyx, a minimum of £50 per annum.

1862. *Mr. Lubbock*: And in 1960, when the present lease falls in, could the Conservators then make a new lease or new arrangements?—I think that would be contrary to our constitution.

1863. Is your object to bring quarrying to an end?—Yes. I believe after 1960 the interests concerned would also have to get planning permission to quarry.

1864. *Mr. Arnold-Baker*: They would surely be the Conservators, would they not?—The land, I take it, would revert to the owners—that is the lessors. The Malvern Council own some of the land which is subject to quarrying, and it would revert to them in 1960. In my view we certainly should not agree to any quarrying after 1960; it would be contrary to our Acts to do so.

1865. *Sir George Pepler*: I do not see who could apply, under town and country planning legislation, to work the minerals, if you were not prepared to allow them to be worked.—No, I agree, except as regards a working quarry owned by the Pyx Co. which is not subject to our Acts.

1866. *Professor Stamp*: I understand you have an exact map, showing the area over which the Conservators have jurisdiction? Are there adjacent areas which are commonable, which are not under your jurisdiction?—Yes, at the southern end of the hills, there is Castle-morton common. That is subject to a scheme made by the Upton Rural District Council under the Commons Act, 1899.

1867. And who is the lord of the manor there?—The Church Commissioners.

1868. *Mr. Arnold-Baker*: If you exercise the powers of the lords of the manors in this area, are you in possession of the manorial documents?—Yes, we have some manorial documents. We have a large book relating to the Foley manor, which we purchased.

1869. Does that give any particulars of manor courts that were held?—Yes.

1870. You said that you do not know who the commoners are, or what are

their rights. Would not they be ascertainable from the manorial documents in your possession?—Since disafforestation in 1630, I take it that new rights have been acquired by prescription.

1871. There is a good deal of livestock about on the common, is there not? Do you know who owns it?—We have a list of active commoners, but it is not complete at the moment.

1872. Yes, but have you any means of connecting the commoners with the livestock on the common?—No, I do not think we have.

1873. *Sir George Pepler*: Might I follow that up, because I think you said that there were 13 parishes with rights at the time of disafforestation in 1631. So far as you know, does that still apply?—That is how I view it, but it is only my opinion.

1874. I think you said that there were 40 to 50 users, and I was wondering what was the relationship between the 40 to 50 users, and the population of 13 parishes. I suppose you have no information on that?—No.

1875. *Mrs. Paton*: Would you say that the whole of the 13 parishes actually take an active part in using the grazing rights?—No, I should not think the whole 13 do. For instance, the Leigh parish is included, and I do not think they do.

1876. *Mr. Lubbock*: No. 22 of your bye-laws says that no unauthorised person shall turn out or permit to remain on the hills any cattle, sheep or other animals. Have you really any means of enforcing it?—That bye-law is limited to 'no unauthorised person' so we get back to where we start from.

1877. You could merely challenge them?—Yes, and, as you know, if you go before the magistrates and a claim of right arises by the other side, even though it may not be a legal right, the magistrates' jurisdiction is ousted and the case falls to the ground. That is the difficulty. Very likely, they would say 'We have a right', and put up a case which may in law be wrong, but that would oust the jurisdiction of the magistrates.

1878. *Mrs. Paton*: In view of what you say, is it not possible for anyone outside these 13 parishes to come and

exercise the right of pasture?—I, myself, would say yes to that, but it is only my opinion. I think we should have difficulty, but it is really a matter for the Board.

1879. *Mr. Arnold-Baker*: Presumably, then, you would want your powers strengthened in this particular connection?—Yes.

1880. *Professor Stamp*: You say that you are in a unique position to preserve the hills, and you ask for further powers. Could I ask what are the objectives which the Conservators have in mind, when they talk about preserving the hills?—That is a matter of policy for the members of the Board, but I think one object is to spend more money on the commons, maybe to use them for agriculture.

1881. 'Maybe to use them for agriculture', is the very point I want to get at. Let us take the case of the hills becoming infested with bracken. Are you for example spending money on its eradication?—Within our limited means, yes. We only have three workmen on these hills. It comes back to finance.

1882. But is that eradication for the benefit of visitors who want to walk over the hills, or for the benefit of commoners pasturing their animals?—It is a matter of policy again, but I would say for both which is in accord with our Acts of Parliament.

1883. *Mr. Lubbock*: Turning to the constitution of the Board of Conservators, I think you want larger funds. Would you like to be able to precept on a larger area? Is that the kind of thing that is in your mind?—I think the aim of the Board—I am subject to correction on this—is, if possible, to obtain a block grant from some central authority, to enable us to do our work more efficiently.

1884. Would you then be prepared to enlarge the representation on the Board of Conservators? I notice, for instance, that there is no direct representative of the commoners, as such.—Not as such. But we have 25 members, which is rather a large number.

1885. Do you regard your trusteeship as being very much in the interests of the public at large, as well as of the commoners?—Yes.

1886. Would you be prepared to have representatives of what are known as the amenity societies?—There again it is a matter for the Board, but, subject to their correction, I think so.

1887. *Professor Stamp*: I am still not clear what the Conservators would do with larger funds or a block grant, if they had them. What would be the real objectives? It is easy to say 'I would like more money', but for what purpose?—*Mr. Ballard*: The difficulty on the hills is that the natural vegetation is always increasing. The hills are normally used by visitors from all over the country and if vegetation is allowed to grow too much they cannot get about. We are thus put to quite considerable expense in keeping it down. That is one item of expenditure. I think the type of thing the Board might have in mind to spend further money on is tree planting. There is scope for that. I think there is also scope for the increase of natural vegetation—wild flowers propagated by man; such things as foxgloves and bluebells. The hills, themselves, are rather bare and uninteresting.

1888. There are two further points on that. First, do you have the right to plant trees?—Yes, although we might get into conflict with the commoners if we afforested a whole hill and interfered with their rights. But we specifically have the right.

1889. Secondly, you say you must keep down the vegetation which grows up. That I understand, but is it for amenity purposes for visitors?—Yes. If we do not do something of the sort the growth after a period of four or five years, always catches on fire in the summer and the natural regeneration of trees which we try to encourage is destroyed. We actually have to do a certain amount of controlled burning, to stop fire from spreading to urban property surrounding the hills.

1890. Quite seriously, and without any desire to catch you out, would not your task, as you envisage it, be easier if the Board had complete control, and did not have to consider the commoners and their requirements?—Not altogether. We have a feeling that if the grazing rights could be controlled, the stock would help us. We should both be going in the same direction. Our difficulty, of course, is that the position is very confused regarding the alleged common

right owners. They, themselves, are confused, we are confused, and of course we collect rather a lot of blame for stock straying. You will realise that the Malvern district has a population of 25,000 around it, and the stock get in people's gardens. We are naturally held somewhat responsible. If we had better control of the rights of pasture I think I am right in saying that the Board would not be averse to seeing quite a heavy stocking policy. I think the natural and, possibly, the finest aspect of the Malverns is the short, springy turf. It is very pleasant to walk on, and we would much sooner have that than bracken, willow herb, gorse and vegetation like that.—*Mr. Cook*: May I follow that up? Years ago the commoner, as we call him, used to cut a tremendous amount of the bracken and use it for piggeries and for thatching, but now he takes no interest in that. The commoners just turn their sheep out and take a chance.

1891. *Mr. Floyd*: If there was the possibility of better grazing, which means in fact controlled grazing, would you like to be able to erect temporary fences; or again, would you like to be able to protect your trees, where they are self-regenerated, with such fences?—*Mr. Ballard*: Yes. The policy of scientific grazing would, of course, involve quite a lot of expense in the way of cattle grids. I think we might have power to do that. At present we have no power to fence, and stock-keeping is very much interfered with. There are a lot of roads with heavy motor traffic running across these grounds. But we should certainly require the power to protect any plants or trees which we, ourselves, had planted.

1892. *Mrs. Paton*: As a temporary measure?—Yes.—*Mr. Cook*: We do already put a proper base with barbed wire round the trees we plant. We have tried to beautify the commons with avenues of trees, and they always need protection to make them strong.

1893. *Sir George Pepler*: Would all your planting be ornamental?—That is so.—*Mr. Foster*: It is set out in Section 6 of the Malvern Hills Act, 1909. We have power to plant, fence and protect trees.

1894. *Dr. Hoskins*: Are the 13 parishes, which have been mentioned, represented as such on the Board of

Conservators in any way?—*Mr. Cook*: No.

1895. Have they any means of representing their views to the Board?—*Mr. Foster*: They frequently do.

1896. And are there differences of opinion between the particular parishes and the Board?—I cannot recall any. It is a steadying influence.

1897. But are there not possibly differences of opinion over what sounds like the indiscriminate use of the commons? Do not the parishes object?—*Mr. Cook*: The only trouble we get is over road making. We are not a road making concern and, therefore, when people ask us to make up roads in certain places, we cannot do so because we have no money.—*Mr. Pearce*: In reply to your question, I do not think there is great competition for grazing rights in our area; that is to say, we have got a population of 25,000 and if you made them all commoners I do not think you would have many more keeping sheep. If I might enlarge on that, I think we need a simple definition of the commoner, much more simple than the old one. We are not interested in excluding people, but we need powers to register those intending to graze. We should get people who want to put sheep on to register with the police, as to the number of sheep they want to put on and where they want to put them. We want powers of general consultation for fencing, road safety, and other purposes. There is not the competition which you might get in other areas, where people are competing for

grazing rights, and have to be restricted to their own particular entitlements.

1898. What I had in mind was not quite so much competition for grazing rights as, say, resentment in particular parishes at stock owned by strangers, who are thought to be non-commoners, coming into gardens, straying on roads, and so on.—We do get that, and that is why we want powers to enforce registration of intention to graze.

1899. *Professor Stamp*: Might I ask a final question on rather a different point? There was, I think, a lot of trouble a short time ago, with regard to the putting up of overhead electric wires over the Malvern Hills. What are the powers and rights of the Conservators in matters of that sort?—*Mr. Foster*: There was an enquiry, in which we were successful in securing that the cables should be put underground.

1900. Could you not yourselves have prevented their going overground?—There is a legal point there. I maintain we have a right to prevent it, because it is an encroachment, but that was not fought out in any law court, and, in any case, the authorities decided that the cables must go underground through the Malvern Hills.

Mr. Lubbock: We shall be visiting the Malvern Hills tomorrow, and I think that we shall be able to take note again, more vividly, of many of the points which have been raised. Thank you very much, both for your written evidence and for the very interesting points which you have dealt with this morning.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by the Malvern Urban District Council

My Council have recently been considering whether they wish to submit any representations to the Royal Commission in regard to common land. As the Commission may be aware, there is a considerable amount of common land in the Urban District of Malvern, which is administered by a body known as the Malvern Hills Conservators constituted under various special Acts of Parliament. I understand that the Malvern Hills Conservators have already submitted a memorandum of evidence to the Commission and you will, therefore, be aware of the powers and functions of that body. A considerable part of the common land under the jurisdiction of the Conservators is situated within the Urban District and the Urban District is represented, firstly, by direct nomination from the Council and, secondly, by representatives elected for the various Wards of the Urban District. To meet their expenses, the Conservators levy a precept upon the various local authorities

concerned but the major portion of their expenditure is borne by the Urban District of Malvern and, in fact, during the last financial year the precept upon my Council represented approximately 92 per cent. of the Conservators' rate-borne expenditure.

It will be appreciated from the foregoing paragraph that the Malvern Council has a considerable interest in the common lands comprising the Malvern Hills.

As the local authority, however, they have been much concerned in recent years regarding the problem of cattle straying from the commons and there is much nuisance and damage to private property caused by straying animals.

The Council have now decided that the following representations should be submitted to the Commission for their consideration:—

- (1) That, under no circumstances, should the powers and rights of persons with common rights be increased.
- (2) That a register be maintained locally of all persons with operative common rights.
- (3) That, having regard to the diminution in the value of money, the penalties provided by statutes which regulate the straying of cattle on highways should be increased.

Examination of Witnesses

COUNCILLOR W. J. MARSH and MR. J. BULMAN on behalf of the Malvern Urban District Council,

Called and Examined

1901. *Mr. Lubbock*: Mr. Marsh, the Chairman of the Development Committee of the Malvern Urban District Council, and Mr. Bulman, the Clerk, have been good enough to come here today to give us evidence on behalf of the Council who have already submitted a statement. Is there anything that you would like to say, in amplification of your paper?—*Mr. Marsh*: We are in rather an unusual position, because of our relationship with the Hill Conservators. I will ask our Town Clerk, Mr. Bulman, to open.—*Mr. Bulman*: By and large, I think it is fair to say that we are behind the Conservators in what they have put before you. You will be aware that a good proportion of the common land, to which Mr. Foster, their legal consultant, has referred, is situated in the Urban District of Malvern, so we also are in some considerable degree affected by their problems. Let me say at once that our chief difficulty is straying animals and animals on the highway. I have merely to put forward three points, which the Malvern Council have agreed upon, and which have been communicated to you.

1902. We have the three points that you made in your letter, first, that, under no circumstances, should the powers and rights of persons with common rights be increased; secondly, that a register should be maintained locally of all persons with operative common rights, and thirdly, that, having regard to the diminution in the value of money, the penalties provided by statutes which regulate the straying of cattle on highways should be increased.—You might very well say that the third has nothing to do with common rights, but it is so tied up with it in Malvern that it is really our major point. Regarding the first and second representations, I have been very interested to hear what Mr. Foster has said about people who actually possess common rights. As an individual living in the district, it has always appeared to me to be a free for all. Anybody could put animals on, if they wished, and that has prompted my Council to put in their second representation that a register should be maintained of all persons with operative common rights. They have the feeling that the present position is obscure and nebulous. If anybody wants

to put cattle or sheep on the common they can, and there is no one to say them nay. Of course, the more animals there are on the common, the more we get on the highways—and not only on the highways traversing the commons. They also wander further afield, and get into people's gardens. It might be interesting if I give you my personal experience. I have had horses, cattle, donkeys, sheep and pigs in my garden, and I assure you they are not very welcome. That has been a considerable bone of contention in the Malvern Urban District. We do not blame the Conservators. We do not blame anybody. It seems to be unpreventable at the present time, but we think that there ought to be a greater obligation on the commoners to keep their animals on the common. As I say, they sometimes wander; in winter when the herbage is poor they frequently wander quite a long way from the commons. If the police find them straying on the highway, they have certain powers of prosecution, but my Council submit that these penalties, having been fixed in the year 1864, are out of all reason at the present time; 5s. per animal, with a maximum of 30s. That is the maximum fine which can be imposed under the Highways Act, 1864, Section 25, and we would like to see some stronger remedy if it could be obtained.

1903. Under existing circumstances, would it be possible for the commoners to prevent their animals straying on the road, except by direct shepherding?—So far as I can see, that would be the only method, unless the commons were fenced. I do not know whether I am entitled to say this—it is a personal opinion—but if the money could be found for fencing and a series of cattle grids, that appears to me, as a layman, to be the answer.

1904. *Mr. Arnold-Baker*: Is it feasible to install surrounding fences?—It depends what you mean by feasible. It would be costly. I do not know whether I am quite the person to answer the question or what the Conservators would say about it. I would not wish to encroach on their ground. We are the best of friends, and I would not like to say anything which they would not agree with.—*Mr. Marsh*: I have lived in Malvern all my life, and on the edge

of the common for a good portion of it. The question of commoners' rights seems to be very much in the air. There would seem to be no written documents. If people live on the side of the common they appear to take commoners' rights, and they have done so for so long that they establish a right. In the early part of this century, the people who kept sheep on the hills used to look after them, and you could see them using dogs to round them up. At that time there was not the danger from traffic. We are unfortunately in the position of having a main trunk road running right through our common land, and last year on that main road we had upwards of 50 sheep killed by the traffic. Apart from it being a nuisance to the people on the road, the straying of animals is definitely a danger to the traffic. If you were coming along at night and a flock of sheep suddenly loomed up—especially if there happened to be a bit of a mist—not taking account of the damage you might do to the sheep, you could do damage to people, life, and to the vehicle you were driving. The fines which can be imposed for sheep on the highway are so ridiculously low that the people who keep sheep on the commons laugh at them and say: 'Even if it costs me £50, £70, or £100 a year, I could not rent a 4,000 acre farm for anything approaching that sum. Anyone living at the side of the main road, or even on the by-roads, has to put up really good fences to keep out the sheep. Then of course you have the problem of people opening gates and leaving them open. I am perhaps in the fortunate position of having a walled garden, and I do not often get sheep in it, but I have had sheep in even when my gates were shut. They actually came and dropped over the wall, which was over 6 feet high, rolled down the path, and got in the garden that way. You can thus imagine the trouble which Malvern has with its sheep. Incidentally, most of the owners of the sheep live outside our Urban District, because most of the big commons are outside the District. That, again, is annoying in itself. The owners of sheep on the commons also take in sheep unofficially from people outside by, as they call it, 'taking them at halves', which means they fatten the sheep and go halves in the profit with the owners. The latter live outside the

Urban District and the common area. This also represents a terrific nuisance and quite a problem. Of course, when one is impounding sheep that imposes a big responsibility, because one is responsible for feeding them and for their welfare. We have no official cattle pounds, which are expensive things to put up. But if we had cattle pounds, we would have to keep the sheep and feed them, and inform the owners. The owners are very reluctant to mark them, because if they do so the police can easily find out who they are and, therefore, fine them for letting them stray. What we are concerned with is the control of the sheep, and having a compulsory register of the people who keep them together with some way of establishing what are common rights. The common rights, at the moment, are a negative thing. We cannot prosecute the owners. There is no law against their having common rights even though they are merely rights established by time.

1905. *Mr. Lubbock*: You mentioned that trouble arose from commoners taking on sheep which belonged to people outside, and that they 'take them at halves'.—Yes, we know they do that but, of course, it is unofficial, and we cannot prove it.

1906. Has there never been any definite custom or rule against doing that?—*Mr. Bulman*: I think the answer is, no. I am aware of the common law rule, to which you have referred, that a man can only put on the common what he can maintain on his own holding in the winter, but subject to what the Conservators say I should say that there are people grazing animals on the Malvern Commons who have no holdings at all.

1907. *Mr. Floyd*: Is there no sheep pound in use now?—*Mr. Marsh*: We have no sheep pound, and our area is so large that it would be necessary for us to have six or seven pounds. The cost would of course fall on the ratepayers—mostly of Malvern Urban District—and it would be pretty big for a town of 25,000 population.

1908. Does anyone see that the sheep are dipped, and the like?—Yes. The commoners themselves see to it and they are supervised by the authority.—*Mr. Bulman*: On the question of a pound, I wonder what use it would be? Animals

are put in the pound, they are retrieved by the owner, and what happens? He just puts them back on the commons. It would just be a vicious circle. It is not as if they were straying from inclosed land.

1909. Would you like it made a rule that no sheep could be put on the common which was not clearly marked in some way, so that the owner could be identified?—*Mr. Marsh*: Yes.

1910. *Professor Stamp*: What would happen if these three points, which you have laid down, were in fact carried out? You would have a list of persons, so that you would know the people concerned, and they could be fined under your third recommendation more than at present. That would mean, would it not, that every commoner would be forced to control his sheep or cattle by herding, or by having a shepherd?—*I think that is the only way.*—*Mr. Bulman*: They might have to work in some co-operative manner. What I am suggesting is that if you have 6 or 12 people with sheep on a particular common, one shepherd would be sufficient. That is what I meant by 'work in a co-operative manner'.

1911. *Mr. Lubbock*: Co-operation would be needed in one form or another, either to erect a fence or employ a shepherd?—Yes.

1912. *Professor Stamp*: Following that up logically, would it not simplify the whole position if common rights were abolished, and grazing on the hills were fully controlled either by the Conservators or some other central authority?—We would certainly support control by the Conservators.

1913. *Mr. Lubbock*: Do you agree with the Conservators that a register of commoners ought to be made and maintained?—Yes.

1914. Who would you think would be the best authority to initiate and carry on that register?—I would certainly have thought the Conservators.

1915. *Dr. Hoskins*: But since we are told that commoners' rights have never been defined, so far as you know, how are you going to compile a register? You say 'of all persons with operative common rights.' Does that mean that you are going to accept claims from any Tom, Dick or Harry, who may have

happened to have grazed animals without permission?—I should think every claim would have to be investigated. I think a claim would have to be founded on something, and the Conservators given power to accept or reject it.

1916. It seems surprising that there is no clue at all as to who possesses common rights. I would have thought that in the original order, the decree of 1632, some definition must have been laid down. Has nobody ever looked into that?—I cannot answer that. I have not got those documents.

1917. It is not a purely historical point, because if you are going to attempt a register, must you not have some definition to start with?—Yes.

1918. If you are going to invent a definition, you will surely be in great trouble.—I think you may have to start *de novo*, and legislation might have to say on what a claim could be based, such as the occupation of land and residence in such and such a parish. Residence in a parish seems a bit wide to me, when there are 25,000 inhabitants in four parishes in the Urban District.

1919. *Mr. Lubbock*: Would you tell me how it comes about that the Urban District covers so much of the area? Was it enlarged in the review 25 years or so ago?—Yes, it was increased in the review of 1932—the review which followed the passing of the Local Government Act, 1929.

1920. Was a Rural District absorbed?—Only small parts of Rural Districts but that did not greatly increase the area of common land in the new Urban District. The common land is within the old Urban District. Not 'bang in the middle', as Malvern was originally a community which grew up round the Priory Church, but whether you go south, north or east, within a mile or less you come to common land.

1921. On finance, your Urban District I believe, provides much of the Conservators' income.—We contend that we provide the means of life to the Conservators.

1922. And do the Conservators want more money?—We do not want them to have it. We already pay a 6d. rate for maintenance of the Conservators' lands.

1923. Would you like to see that position altered?—There is nothing in my terms of reference on this, but the position is that the Conservators have, in their Acts, power to levy on us to the extent of a rate of 6d. in the pound on the assessable value. Since the recent revaluation has put up our rateable value by something like 65 per cent., my Council are anxious that the Conservators should not ask for any more money now than they were getting before the increase. I think that is the proper answer.

1924. *Mr. Floyd*: When you say that you would not like to see the Conservators get any more money, do you really mean that you would not like to see them getting more money from you?—Yes, I would like to see them getting more money from somebody else.

1925. Do you think that the Malvern Hills are so much used by motorists and so on, that the money should come from a wider source?—Yes, but I do not think a wider source, geographically, would help. If you use the term 'wider source' in its broadest sense, and say from government funds, or some neighbouring counties or county boroughs, I say certainly. The Malvern Hills are very much enjoyed by people from Birmingham and the Black Country.

1926. *Mrs. Paton*: Do you have coach trips coming from all over the country to the hills?—Yes.

1927. So the whole country is indebted to you?—We think so, and we think they ought to pay.

1928. *Mr. Arnold-Baker*: Do the visitors not raise the rateable value of property around Malvern?—Not when they only come for a day.—*Mr. Marsh*: If they come and bring their own meals, which they often do, we do not make anything out of it.

1929. *Professor Stamp*: The Conservators' powers are defined by their own Acts of Parliament. They are not delegated to them by your Council, are they?—*Mr. Bulman*: No, but I ought to explain that the Urban District Council do own one or two patches of freehold on the Malvern Hills; the surface is controlled under the Malvern Hills Acts by the Conservators. I do not know if I can help the Commission in any way factually, but you did touch upon quarrying in examining the Con-

servators. We were in some quarrying fights and have been for many years. The Urban District Council happen to own the freehold of one piece of the hills in North Malvern, which is the subject of a quarrying licence. I should like to make it clear that quarrying is not with the goodwill of the Malvern Urban District Council. They, indeed, purchased this particular piece of freehold to stop quarrying, but it was the subject of a licence to quarry which already existed. When the Bill, which became the Malvern Hills Act, 1924, was before Parliament, the present licences in this particular area were the result of a compromise. The Conservators and the Malvern Urban District Council wanted to preserve the silhouette of the Malvern Hills. My Council were induced to throw in a bit of their freehold, with a renewal of the licence to quarry until the year 1960. That licence is still in existence, but it restricts quarrying to a certain contour line, to preserve the silhouette. I was not there at the time, but I understand that was the sole purpose of this compromise. As has been mentioned,

permissions have been granted under the Town and Country Planning Act for quarrying. The same firm, the Pyx Granite Company, have such a permission—the last one granted by the Ministry—to quarry land which is the Company's freehold until 1966, so that so far as that end of the hills is concerned most people in Malvern are hopeful that 1966 will see the termination of quarrying. I think I can safely say, as the Conservators have said, that so far as the Malvern Urban District Council is concerned there will be no question of a voluntary renewal of any such licence or permission. I should mention that the planning permission I am talking about was not given by the Worcestershire County Council, nor by the Malvern Urban District Council, which exercises a certain measure of delegated power; it was a decision of the Ministry of Housing and Local Government, who called in that particular application under their powers.

Mr. Lubbock: Thank you very much. As I said before, we shall be visiting the hills to-morrow.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by the Clent Hill Common Conservators

Difficulties concerning the Administration of the Common

Introductory

1. Clent Hill Common is situate in the Rural District of Bromsgrove in the County of Worcestershire. It is some 165 acres in extent. It is about 12 miles from Birmingham and is adjacent to Stourbridge and the Black Country. At holiday times and weekends it is visited by many people from the adjoining industrial areas for rest and recreation. The summit of the hills is about 1,000 feet above Ordnance Datum, and from it on a fine day there is a magnificent view of the surrounding countryside from Brecon Hill and the Cotswolds in the South to the Malverns, the Ahherley and the Clee Hills, the Stretton Hills, the Shropshire Wrekin and the mountains of Wales and the Border Country.

2. The Common is administered under an Award of 14th April, 1881, made in pursuance of the Regulation (Clent) Provisional Order Confirmation Act, 1880, and is governed by Byelaws.

3. The principal difficulties concerning the administration of the common arise from lack of money; and the constitution of the Board of Conservators; and uncertainty as to the rights of the commoners and difficulty in identifying them.

A. Lack of Money

4. The funds to which the Conservators are legally entitled are an annual contribution not exceeding ten pounds each from the local authorities named in the fourth

recital of the Award, namely, Stourbridge Borough Council, Dudley County Borough Council, Rowley Regis Borough Council, the Urban District Council of Brierley Hill and Quarry Bank (formerly two separate Authorities but now amalgamated into one Authority) and the Kidderminster Borough Council—a total permitted maximum of £60 per annum from the six authorities mentioned in the recital.

5. A copy of the Accounts of the Conservators for the year ended 31st December, 1955, is at Appendix I from which it will be seen that expenditure was £498 16s. 4d. for the year; and that £426 4s. 10d. out of that total was spent on wages of the Hill Ranger (the only workman employed by the Board) and employer's insurance contributions; that all the other expenditure except £22 6s. 0d. was for the annually recurring routine costs of management and administration; and that there was a deficiency of £25 15s. 4d. for the year. The sole assets of the Board amount now to £198 7s. 3d.

6. The deficiency between the legal income and the necessary expenses of management is made up by voluntary contributions from other Local Authorities as listed on the income side of the Accounts. Most of these Authorities have agreed to increase their contributions for the coming year, and it is estimated that this will increase the Conservators' income by some £70 per annum but £52 of this will be absorbed in a full year by an increase of wages of £1 a week given to the Ranger in July, 1955. Even so the Conservators are thus unable themselves to finance needed improvements and in a period of continually rising costs are repeatedly having to appeal to the contributing authorities for increased contributions (1947, 1952, 1955).

7. Post-War Improvements to the common which have been effected through the kind assistance of other authorities are as follows:

- (a) Planting of Trees by the Worcestershire County Council (1953).
- (b) Surfacing of area of land for car park with the aid of the County Council who paid £108 out of a total cost of £158 (1953).
- (c) 1956 (proposed) Re-building of public lavatories (estimated cost £1,200) by the Bromsgrove Rural District Council with the assistance of the Worcestershire County Council.

8. It will be seen, therefore, that the 'legal' funds of the Conservators are inadequate; and that, even with the aid of voluntary contributions, the Conservators' resources are insufficient for financing improvements as they become necessary.

B. Constitution of the Board and uncertainty as to Commoners' rights

9. The constitution of the Board is provided for in item 10 sub-paragraphs (1), (2), (3) and (4) of the Award.

10. The Lord of the Manor is Lord Cobham.

11. Difficulty arises in securing the appointment of the 'two persons nominated by the persons interested in the said common'. They are referred to later in the Award where reference is made to convening 'a meeting of the persons interested in the said common and the majority in respect of interest of those present at such meeting shall nominate two Conservators'. What precisely 'persons interested' means and how a 'majority in respect of interest' is ascertained are difficult questions to answer. Presumably the 'persons interested' would be those having rights of common specified in their title deeds. But who these persons in fact are and what rights they have are questions which seem not to have been clearly answered. In practice no one seems to have exercised any rights of common (such as grazing beasts) there for a long time and there would seem to be no practical objection to a cessation of the commoners' rights, whatever they may in theory be. With regard to the election of the 'two persons', the required public notice is given, a few people from the vicinity of the common attend the meeting, and elect the representatives without much legal formality.

12. The Parish Councils of Clent and Hagley each nominate a representative and Halesowen Parish is now merged in the Borough of Halesowen, and they nominate a representative.

13. The nominees of the 'persons interested' and of the three 'Parishes' hold office for terms of three years.

14. The Mayors of the four Boroughs and the two representatives of the one Urban District (two representatives on account of the amalgamation referred to in paragraph (4) above) are appointed (and more usually change) annually.

15. The other local authorities who contribute voluntarily to the funds of the Conservators are each invited to send a representative to the meetings of the Conservators though they are not lawfully members of the Board of Conservators. It will be seen that there is little continuity of membership of the Conservators apart from the five 'three-year' members and the lord of the manor.

Remedies suggested in the past

16. Various suggestions have been made in the past to overcome some of the difficulties mentioned, viz. :—

- (a) The promotion by the Conservators of a Private Act of Parliament. For this, however, the funds of the Conservators have always been inadequate.
- (b) The making of a Provisional Order under the Commons Act of 1876. This, it is understood, would have had to be initiated by persons representing at least one-third in value of such interests in the common as were proposed to be affected by the Provisional Order. But, as explained above, the identity of the commoners and their rights would probably be difficult to ascertain and the persuading them to initiate action likely to prove impossible.
- (c) A suggestion was considered that a scheme for regulating the common might be made under the Commons Act of 1899 by the appropriate County District Council (Bromsgrove Rural) but it was thought this could not be done in the case of a common regulated under a Provisional Order made under the Inclosure Acts, 1845-1882.
- (d) A suggestion was made by the Conservators that the Worcestershire County Council might ask for an Order transferring the functions of the Conservators to the County Council under Section 270 of the Local Government Act, 1933. When discussed with the Ministry of Health in 1950 (that Department then being responsible for the matter) it was understood that no Order had ever been made under that Section and its precise scope had not, therefore, been tested. It seemed that only the transfer of the existing functions could be effected and that no additional financial powers or functions would be transmitted to the County Council thereby. The proposal was not further pursued at that time but the County Council through the kind help of the lord of the manor did take from him a Conveyance of the freehold of the Common Land so that they would be authorised to spend County Council funds on improvements of the Common under the County Council's open spaces powers.
- (e) Since that time the possibility of transferring the Conservators' powers to the County Council under Section 270 of the Local Government Act, 1933, has been re-opened and is now under consideration in conjunction with a suggested enlistment of help from the National Trust, if that can be arranged.

Recommendations

17. If legislation concerning commons generally is now contemplated this would seem to be the appropriate time to simplify and modernise the administration of such commons. It is suggested that this could be done as follows:—

- (a) The Award made under the Regulation (Clent) Provisional Order Confirmation Act, 1880, should cease to have effect.

- (b) The land of the common and the general management and administration of the common should be vested in a Local Authority—this might be either the Worcestershire County Council, or the Bromsgrove Rural District Council, but in either case provision should be made to admit to membership of the Management Committee a representative of a contributing Local Authority; and the power to give and receive contributions should be preserved.
- (c) An attempt should be made to ascertain who are the commoners and what rights they may have; and a decision should then be taken whether or not it is necessary to preserve these rights, including the right of representation on the Management Committee.

Appendix I

CLENT HILL COMMON CONSERVATORS

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER, 1955

EXPENDITURE			INCOME		
	£	s. d.		£	s. d.
To Salary of Clerk year ending 31.12.55	20	0 0	By Contributions:—		
" Salary of Surveyor year ending 31.12.55	25	0 0	Staffordshire County Council ...	28	0 0
" Wages of Ranger	411	15 1	Worcestershire County Council ...	35	0 0
" Employers Insurance Contributions	14	9 9	City of Birmingham	40	0 0
" Subscription	10	6	Corporation of Dudley	33	0 0
" Insurance Premiums	10	9	Corporation of Halesowen	23	0 0
" Postage	2	4 3	Corporation of Kidderminster ...	15	0 0
" Cheque Book and Bank Charges	2	0 0	Corporation of Oldbury	25	0 0
" General Repairs and Requisites	22	6 0	Corporation of Rowley Regis ...	30	0 0
			Corporation of Smethwick	20	0 0
			Corporation of Stourbridge	33	0 0
			Corporation of Tipton	20	0 0
			Corporation of West Bromwich	25	0 0
			Corporation of	£	s. d.
			Wolverhampton	19	7 6
			Add: Income tax		
			deducted but re-		
			claimable	10	12 6
				30	0 0
			U.D.C. of Amblecote	10	0 0
			U.D.C. of Brierley Hill	25	0 0
			R.D.C. of Bromsgrove	23	0 0
			Parish Council of Clent	18	0 0
			Parish Council of Hagley	12	12 0
			"A Friend"	5	5 0
			Total	450	17 0
			By Wayleaves and Rentals	16	0
			" Licences (Ponies)	20	0 0
			" Interest (Trustee Savings Bank)	1	8 0
			" Deficiency of Expenditure over		
			Income carried to Capital	25	15 4
			Account	25	15 4
				£498	16 4
				£498	16 4

Examination of Witnesses

ALDERMAN F. L. ROSE, ALDERMAN A. L. S. TODD, M.A., MR. C. PALMER, MR. A. P. DRURY, M.A., and MR. T. W. TIVEY, M.I.Mun.E., on behalf of the Clent Hill Common Conservators,

Called and Examined

1930. *Mr. Lubbock*: We are very glad to see the representatives of the Clent Hill Common Conservators here today. We have your paper, which we have studied with interest. Before we ask you questions on it, would you, Mr. Rose, as Chairman, like to say, anything in amplification or explanation of any of your points?—*Mr. Rose*: Yes please. I think we have set out our views pretty clearly on these papers but there are just one or two points. I would first like to point out that the hills are of great beauty, and we have thousands of people visiting them at holiday times particularly, and also at week-ends. They are appreciated by the whole population of the Black Country. Our paper, first of all, points out our great difficulty on the financial side. Our legal income is only £60 a year.

1931. But are you kept strictly down to that?—No. We have very good friends, and the majority of the local authorities round about give us everything we ask for. Up to the present, when we have asked for a whip round it has always been forthcoming, and I have no doubt that local authorities would increase their contributions if we called upon them to do so. We have actually recently asked for a small increase to meet an increase in the Ranger's wages, and we had the money given to us. That income is for running the day to day things, of course when we have any capital expenditure we are in difficulty. We recently wanted to improve the lavatories on the hills. We ourselves have no capital with which to do so. We did however receive help for that from the Worcestershire County Council and the Bromsgrove Rural Council. The County Council are now the owners of the ground, the ground landlords. Their ownership has enabled them to spend money, and they have helped us in that way. In our paper we have also mentioned the constitution of the Board. There is a difficulty there. The representation, to a great extent, changes every year, because the repre-

sentatives are the mayors of the boroughs. As they are appointed for one year, representation on the Board of Conservators is constantly changing. There are just a few of us who have been on it for some years. I have, myself, been a Conservator for about twelve years, and there are one or two others who have also been on the Board for some years. The rest are continually changing. We have, during the last few years, asked contributing authorities to send a representative but, of course, although we are glad of their advice, when it comes to a vote on anything that might be of a legal nature, we have to ask them not to take part in it. That is not very nice.

1932. Nor satisfactory?—No, that is one of our difficulties. We have considered making a change in our authority for a good number of years. Some years ago we made enquiries to see if the Worcestershire County Council could take over our powers, but we were advised at that time that it had never been done under Section 270 of the Local Government Act, 1933; nor did there seem to be any desire at that time to help us and set a precedent. We have other advice now that it seems to be a possibility. The Conservators themselves have also changed their attitude a little, and feel that although they would like to bring the Worcestershire County Council into the matter, they would still desire to have local representation. They would prefer not to hand over the hills entirely to the County Council, but to maintain the local connection.

1933. Would you like then to have a committee of management set up under the County Council, which would be a sub-committee or committee of the County Council, but with local representation?—Yes, with local representation, so that the whole control would not pass to the County Council; there are local interests which are very strong. The Clent Hills are at the north end of the county, at the end nearest to the

Black Country; these local interests would like still to have a say in management for financial reasons, but to assist good management they would be very happy to have the County Council brought into the matter.

1934. Where do the people mainly come from at weekends and holidays?—They come from the neighbouring towns of Stourbridge, Halesowen, Smethwick, Oldbury, Rowley, Dudley and Birmingham. I have been told that there have been as many as 15,000 people brought in by train in one day to the hills, in the old days; whether that is true or not, I do not know, but we do know that thousands of people come. Clent Hill is very accessible to all those districts by road. We have 165 acres on the one hill, and then there is the neighbouring hill of Walton so there is plenty of room for all the visitors.

1935. Do they arrive in buses?—Buses come along the main roads. The visitors then walk up the by-lanes and footpaths from the Birmingham—Hagley—Kidderminster road, or the Wolverhampton—Stourbridge—Bromsgrove road. On the other side, the east side of the hill, the road runs to Birmingham.

1936. *Professor Stamp*: As there are only 165 acres, is there any room left for commoners' animals?—There are no animals. No grazing takes place at all. Whether the commoners have any rights of grazing, we do not know: we do not think so, but for many years there has been no grazing. If there are any rights of grazing, they are not exercised.

1937. *Mr. Lubbock*: How long is it since their use was discontinued, 20 years or 50 years?—I have not known it in the last 20 years.—*Mr. Palmer*: In 1937 or 1938 the grazing was stopped.

1938. *Mrs. Paton*: Is there any known commoner still living?—Yes.

1939. Are there people then who could exercise common rights?—Yes. Certain rights of way have continued to be used, but the grazing was, as I said, stopped in 1937 or 1938.

1940. *Mr. Arnold-Baker*: Why was it stopped?—Animals were allowed to roam all over the place and there were a lot of complaints. A case was brought, and after that there was no

grazing. We were prosecuted, we had to pay, and that finished it.

1941. *Professor Stamp*: Paragraph 10 states that the lord of the manor is Lord Cobham. Does he retain any mineral rights?—I suppose so.—*Mr. Todd*: About three years ago, Lord Cobham, who was the lord of the manor, gave the land to the County Council really to enable us to administer the common, or so that the County Council could administer the common more easily.

1942. So that paragraph 10 is superseded now?—*Mr. Drury*: I believe he may still be the lord of the manor, but he has conveyed his freehold. He still owns all his estates round and about, and I presume he still has the status of lord of the manor, but he has conveyed the freehold of the land to the County Council, as I understand it, to give them legal power to spend money in assisting us. I think that gives them a power under the Open Spaces Act to spend money and they have, as is mentioned in the Conservators' memorandum, helped us materially in that way. That was how that was done. So far as the commoners are concerned, I myself, as is said in the memorandum here, know very little about the situation. Mr. Palmer is, himself, a commoner, and he has brought deeds today, which I have never seen before, and which include deeds of enfranchisement of copyhold tenure. These deeds give these people named certain common rights which are referred to in the deeds of enfranchisement, but the deeds do not say what the rights are. The deeds merely grant such rights of common as were previously enjoyed without specifying the rights. I myself still do not know what rights the commoners have, or had and enjoyed. Talking to some members of the Conservators, no-one seems to recollect that there was any grazing or anything like that, except that Mr. Palmer says that there were some proceedings taken to stop people grazing the common in 1937. That would, perhaps, have been because in the byelaws, which the Conservators have made, there is one prohibiting the grazing of animals without rights.

1943. I should have thought, subject to what the lawyers may say, that the County Council is actually the lord of the manor.—*Mr. Todd*: I am very

interested that Professor Dudley Stamp has raised this particular point, because I have raised it several times with the legal advisers to the County Council. I raised it in this way. Our award, under which we act, sets out a number of persons who are *de facto* Conservators, and the lord of the manor is one. We oo-opt to our meetings a number of other representatives, such as myself, who represent the County Council. I have been attending, as have other local authorities who contribute monies, but who are not on the original list. Our learned Clerk, when it comes to a vote, very properly says that the only people who can vote are those people whose names are on the award as Conservators. Therefore, I attend, representing the County Council and living in the district, but I have no vote. On the other hand, I have suggested to the legal advisers to the County Council that since Lord Cobham has sold the freehold he has also transferred the lordship of the manor, and, therefore, so far as the Clent Hill Conservators are concerned I, as the representative of the County Council, have, in fact, a vote on that body, because I represent the lord of the manor. The County Council has not been able to answer that question. I do not know if anybody can answer it.

1944. *Mr. Floyd*: Could not an enquiry he made of Lord Cobham's solicitors, as to what they have sold?—The conveyances which I have seen do not lead to any elucidation of that point. I think Lord Cobham was very pleased to get rid of the encumbrance of the common, which the County Council were willing, in the public interest, to accept, but the legal position is difficult.

1945. *Professor Alun Roberts*: I am interested in the extinguishment of the commoners' rights in 1937. It is only 19 years ago. May I ask if any of you recollect if it was accepted without protest?—I think I can help on that point. There has been a tremendous amount of litigation over the last fifty years in connection with Clent Common, but so far as the commoners' rights are concerned, in regard to grazing, they have never been tested at law. Mr. Palmer took legal advice in 1937, or about that time, as to whether or not he could graze, and he was advised by his solicitors, and I believe by eminent counsel, that he could

not do so. But I have often wondered whether, if this was put to the test in a court of law, it would be so, because, after all, the award, and the bye-laws made under the award, surely do not do away with the common rights, where those common rights exist. But the point has never been tested.—*Mr. Drury*: I can confirm that, with regard to grazing, the bye-law says that no one shall graze *without right*. If a commoner can show he has some rights attached to his holding—some rights on the common itself—then, of course, he would not be subject to any penalty under the bye-law.

1946. Did the commoners voluntarily surrender their rights, because with the spread of the motor car and what-not they were not worth while, or did they find themselves unable to establish and give written evidence of their right to grazing?—*Mr. Rose*: I should say that in most cases they did not desire to exercise the rights. They just do not keep animals any longer.

1947. *Professor Stamp*: I would suggest that this common has just ceased to exist as such. It has no lord of the manor, no commoners, and no exercise of commoners' rights. It is a public open space, owned by the County Council.—*Mr. Drury*: It has commoners, I think, because the people living round it can produce their deeds, which refer to the grant of commoners' rights to them when the copyhold was enfranchised. Also, I have seen an old press cutting of about 1937, which said that at the time when the award was made, under the Inclosure Acts procedure, it was then necessary to consult the persons interested in the commons. Quoting from the newspaper cutting of 1937, at the time the award was made in 1881, there were 37 commoners, and from the deeds produced this morning there seem to be at least 2 today; but the cutting did not state what were their rights. I am appointed by the Stourbridge Borough Council to act as Clerk to the Conservators and I am no expert on the law relating to commons. I do know however that the lord of the manor, as we call him, still has his estate near—he has property round about—and so far as I know he has only conveyed away the freehold of this land. It is really, in effect, an open space. I do respectfully

agree with that. That is what it is and how it is used, yet its control rests under the award, with the Conservators, and it is really not working well. Our Chairman has referred to the lack of funds which, of course, is a material thing. It results also in us not having any staff. A local authority will have its staff, a legal adviser, a surveyor, and a finance officer, but the Conservators have no such staff. I am from the Borough of Stourbridge, and Mr. Tivey is the Borough Surveyor of Halesowen, and is loaned by them to help us. The only employee we have is the Hill Ranger, whose wages absorb practically all our income, leaving virtually nothing over, for any improvements. That, I think, is one of the reasons why the Conservators have suggested that, at any rate, with this kind of common, steps should be taken as we have said to try to ascertain what are the commoners' rights. They would not want to over-ride them, or do anything like that. But, subject to that, the Conservators have suggested the common would be better managed by a local authority of some sort. The conclusion that we have in our memorandum before you, paragraph 17 (b), was passed by the Conservators at a meeting, without dissent:

'The land of the common and the general management and administration of the common should be vested in a local authority—this might be either the Worcestershire County Council, or the Bromsgrove Rural District Council—in whose area the land is—'but in either case provision should be made to admit to membership of the Management Committee a representative of a contributing local authority; and the power to give and receive contributions should be preserved.'

Ever since I have been acting as their Clerk, which is some 12 years now, the Conservators have always been dissatisfied with their administration, and as far back as 1949 they asked if the County Council would accept a transfer under Section 270 of the Local Government Act, 1933. They speak with the same sort of voice in the memorandum which they put before you, in that paragraph 17 (b), and although, as our Chairman has said, we did not get very much encouragement in 1949 when the matter was first raised, it did result in the

county taking a little more interest in us and acquiring the freehold and helping us with money, planting trees, making car parks and things of that kind, which has been greatly appreciated. A new scheme is now emerging and the County Council are showing a very much greater interest in the possibility of transfer of powers under Section 270. An idea which is emerging is that the neighbouring common of Walton—when you come to Clent Hill to-morrow, you will see Walton Hill in the distance—which is managed under a scheme by the Bromsgrove Rural District Council, should be joined up with our common. The county would take some intervening land between the two hills, and the whole area would be made into one larger public open space and run as such by the County Council through, probably, the National Trust or a local committee. Our Chairman said that he would not like the whole control to be transferred to the County Council; the Conservators wish that local representation should be secured on whatever committee is responsible. They have, hitherto, always been in favour of transfer under Section 270 and I, myself, could not see any legal difficulty in the first place. To-day, it seems to be accepted. The County Council have taken the joint opinion of two leading counsel who have advised that a transfer, provided the two parties agree, could be done under Section 270. I think, possibly, the Section could be improved, because there was some doubt as to whether the County Council could delegate their powers of management to a committee. There was also a doubt raised in the early days by the Ministry of Health, as it then was, that, if a transfer of powers was made, it might not give any power to spend money, which was why the county took the conveyance of the land. I have never been very impressed with that argument, but if Section 270 is not adequate, it could be improved by giving the transferring authority power to spend money on the commons, and power to delegate or co-opt local representatives.

1948. *Mr. Lubbock*: Would that need amending legislation?—Yes, to amend Section 270, although counsel have advised that the transfer could be effected as the section stands.

1949. *Professor Stamp*: If this area is still a common, are not the only people

who have legal right of access to it the commoners? Have all the thousands of visitors in fact any legal right of access at all? Secondly, if the County Council have become, in fact, the lord of the manor, have they any legal right to plant trees, or to put down a car park?—The car park is just off the common, I think. With regard to the planting of trees, I would like time to look into it, but I think in the award it says that that is one of the powers of management which can be used, so the Council could give us the trees and we could plant them, which we as Conservators can legally do. With regard to the public having access, when the inclosure award was made under the Regulation (Clent) Provisional Order Confirmation Act, 1880 both that Act and the award refer to the common being used for recreation and pleasure. I do not think there is any doubt that the use for that purpose is quite lawful, subject to whatever rights the commoners may have, if they can be ascertained.—*Mr. Rose*: I think that

was one of the great objects of the award, was it not, to enable the general public to enjoy the common?

1950. *Mr. Lubbock*: Is there anything else you would like to say?—*Mr. Drury*: If I may refer to Professor Stamp's point, paragraph 7 of the award of 1881, says: 'and I declare that in pursuance of the said Provisional Order I do reserve for the benefit of the inhabitants of the several Parishes of Clent Hagley and Halesowen and of the several towns of Stourbridge Dudley Rowley Regis Brierley Hill Quarry Bank and Kidderminster and of the public generally at all times a privilege of walking and playing games and enjoying other species of recreation over the whole of the said Common subject to such bye-laws as are hereinafter mentioned.'

1951. *Sir George Pepler*: Are there any organised games on it, any provision for football or anything like that?—*Mr. Drury*: No.

Mr. Lubbock: Thank you very much.

(The witnesses withdrew.)

Memorandum of Evidence Submitted by Major L. Montague Harris

'Chipping Sodbury Town Trust

By a Scheme sealed by the Charity Commissioners of England and Wales on the 27th January, 1899, entitled 'In the Matter of the property of the dissolved Corporation of "The Bailiff and Bailiff Burgesses of the Borough of Chipping Sodbury" and of the Trusts of the Grammar School and Town Lands and of the Church Lands formerly administered by the same Corporation: and "In the Matter of The Municipal Corporation Act 1883"', the real estate of Chipping Sodbury Town Trust became vested in the Official Trustee of Charity Lands and the said scheme provided for the appointment of Trustees to manage the said property and affairs of the Trust.

The Mead and Stub Ridings were granted to the Burgesses of Chipping Sodbury by William Le Gros the son of Stephen the son of Odo Count of Champagne (later created Earl of Holderness in Yorkshire and Earl of Albermarle in Normandy) he being the brother-in-law of William the Conqueror by virtue of his marriage to Adelaide sister of the Conqueror. A translation of the confirmation of this grant is produced at Annex A so far as it has been found possible to translate the original confirmation grant.

The realty belonging to the Trust consisted as follows:—Lands in the Parish of Old Sodbury formerly belonging to the Bailiff and Bailiff Burgesses of Chipping Sodbury as follows:—

<i>Name</i>						<i>Area in Acres</i>
Stub Riding	...	...	...	...	...	79·305
Stub Riding on west of High Road	...	...	...	...	...	6·785
Riding Quarry	...	...	...	...	...	3·085
Riding Quarry	...	...	...	...	...	·570
Hayward's cottage and garden	...	...	...	...	...	·225
						89·970
Mead Riding	...	...	...	...	...	109·104
Total						199·074

The Riding Quarries consisting of 3·085 acres and ·570 acres and that part of the Stub Ridings situate on the west of the High Road 6·785 acres have some long time since been sold by the Trustees with the consent of the Charity Commissioners and the capital sums invested for the purposes of the Trust.

The realty now consists of:

						<i>Acres</i>
(a) Stub Riding	...	...	...	...	...	79·305
(b) Mead Riding	...	...	...	...	...	109·104
Hayward's cottage and garden	...	...	...	...	...	·225
						188·634

Of the latter acreage the whole of the Mead Riding (109·104 acres) and the major part of the Stub Ridings namely 64·500 (est.) acres totalling together 173·570 acres were requisitioned by the Ministry of Agriculture and Fisheries on 10th July, 1941, and cultivated by Gloucestershire War Agricultural Executive Committee as agents for the Minister.

On the 1st June, 1951, the Minister derequisitioned 11·650 acres of the Stub Ridings and this land is now allocated by the Trustees for the purposes of playing of games.

That part of the Stub Ridings consisting of approximately 14·805 acres not requisitioned by the Ministry is also used for the purposes of games, namely tennis (consisting of three hard courts), rugby football, association football, cricket and hockey.

The Minister relinquished possession of the whole of the Mead Ridings (109·070 acres) and the remainder of the Stub Ridings (52·689 acres) on 25th December, 1954.

Certain rights of common of pasture on the Ridings were formerly vested in the Bailiff and Bailiff Burgesses of Chipping Sodbury and now vested in the inhabitants of Chipping Sodbury and these are:

Land over which rights exist	Area	Extent of right	Persons enjoying right
The Stub Riding	79·305	Lammes rights of pasture sans nombre, on payment of dues.	The inhabitants of Chipping Sodbury.
The Mead Riding	109·104	do. do.	do. do.

The powers of management of the Ridings given to the Trustees by the before-mentioned scheme are as set out in Annexe B.

The scheme provides that the income of the Town Trust shall be as follows:—

The income of the Charity shall be applied by the Trustees in one or more of the following ways:—

- (1) In defraying the cost of repairs and insurance, and all other charges and outgoings payable in respect of the property of the Charity and not payable by the occupiers thereof, and all the proper costs, charges and expenses of and incidental to the administration and management of the Charity.
- (2) In improving the Ridings by drainage, fencing, levelling, manuring or otherwise.
- (3) In enclosing and improving part of the Stub Riding for additional acres.
- (4) In enclosing, improving, and maintaining part of the Stub Riding for the purposes of a recreation and cricket ground.
- (5) In maintaining the fire engine belonging to the Charity and defraying any expenditure incidental to its use for the benefit of the inhabitants of Chipping Sodbury.
- (6) In establishing and maintaining a reading room and library for the use of the said inhabitants.
- (7) For the purposes of any other institution or work approved by the Charity Commissioners.

Any residue which cannot be applied as aforesaid may be applied in relief of the rates of Chipping Sodbury.

Up to the date of the requisition of the Ridings by the Ministry the Trustees administered the Ridings in accordance with the scheme and the Mead Riding was divided into acres for the benefit of the inhabitants of Chipping Sodbury but it was found that many acres were not taken up and the crop of such acres was sold by the Trustees for the benefit of the Trust.

The cultivation of the acres was allowed by the holders thereof to deteriorate and only a very limited number of the holders actually owned beasts and then the owners violated the regulations by selling the crop to persons not entitled to the acres.

When the requisitioning took place the demarcation of the acres, namely by way of farrows or small ditches, was destroyed as the Ministry ploughed up the land and the Mead Riding now consists of one stretch of pasture land.

The Trustees have not since the requisitioning of the Stub Ridings prepared the qualified holders list as in addition to finding it difficult to ascertain who are entitled to the benefit of the rights the inhabitants of the Ancient Borough of Chipping Sodbury who could legitimately claim the benefit of such rights are negligible as but two or three of such inhabitants are owners of cattle and sheep, apart from one or two butchers who purchase cattle for the purpose of their trade.

Clause 45 of the scheme relates to the commonable rights over the commons and is as follows:

The Trustees shall permit the inhabitants of the area co-extensive with that of the Ancient Borough of Chipping Sodbury to exercise the same rights of common as heretofore from the 15th October to the 15th December in each year over the Mead Riding and the Stub Riding on payment to the Trustees of the same dues as were payable to the Bailiff's fund.

Formerly the Trustees made a charge of 2d. per head for sheep grazed on the Ridings during the 'commonable right' period but since 1917 no sum has been collected owing to the practically non use of the rights and since the requisitioning of the Ridings the rights have not been exercised except perhaps by not more than five owners.

The Trustees have given the matter of the administration of the Scheme in its present form very careful thought and consideration and have concluded that the present day conditions call for an amended scheme having regard to the fact that

few (if any) of the inhabitants of Chipping Sodbury can satisfy the conditions entitling them to benefit by the Scheme so far as acres, stems and commonable rights are concerned.

They base their conclusions on the footing that when the grant was made agriculture was practically the sole occupation of the inhabitants, and that when the scheme was formulated a large number of inhabitants owned cattle, sheep or horses or were employed in work of agriculture of one form or other, but in the present day the Trustees are not aware of one inhabitant of the Ancient Borough being a genuine agriculturist or an employed farm worker.

The Trustees have accordingly approached the Charity Commissioners with a view to the making of a new scheme providing for the deletion of all clauses relating to rights of acres and fall and spring stems and that the Trustees should be permitted to grant a long lease or leases of both Ridings to the county council or others as small holdings and apply the proceeds of the lettings for the benefit of the inhabitants of the Ancient Borough generally and to develop parts of the land for recreational and other social purposes.

The Trustees are however advised that such an amended scheme cannot be brought into being until the commonable rights for the limited period of 15th October to 15th December are by some legal method or legislation extinguished.

The Commission are therefore respectfully asked by the Trustees to give full consideration to the opinions of the Trustees concerning these 'out of date and virtually non-exercised rights' and to recommend that such rights as these be extinguished by legislation or other lawful means.

Sodbury Commons

These commons consist of:

Sodbury Common
Harwood Gate Common
King Grove Common
Bucketts Hill Common
Colt's Green Common
Coomb's End Green Common

all situate in the Parishes of Old Sodbury and Little Sodbury and certain road side ste leading to and from the above mentioned commons. The acreage is three adred and thirty acres or thereabouts.

In addition to the above commons other lands formed part of the commons but se lands consisting of 39 acres 2 roods and 16 perches and being known as unt's Field Common and Mill Acre were sold under an Award dated 1st April, 908, made under a Provisional Order Act known as the Commons Regulation (Sodbury) Provisional Order Act, 1902, for the purposes of meeting the expenses in connection with the said Act.

The management of the commons is carried out by Conservators appointed in accordance with the provisions of the Award and the said Provisional Order Act. The Award provides for a reservation of a right of free access to the commons and a privilege of playing games and enjoying recreation thereon at such times and in such manner and on such parts of the Commons as may be prescribed by any bye-laws and regulations and also gives power to the Conservators to repair and maintain the existing bridle paths and footpaths and to set out make and maintain new carriage roads, bridle paths and footpaths over the commons.

In the Award there is allotted to the Parishes of Chipping Sodbury, Old Sodbury and Little Sodbury the parts of the commons to be held in trust by the parish council or the chairman of the parish meeting as the case may be as allotments for field gardens for the poor inhabitants of the said parishes, consisting in all 15 acres. These allotments are now under the management or administration of a committee known as the Commons Allotment Committee but as no parishioners now apply for allotments the latter form fenced pasture land and are let or the grass sold and the proceeds applied for the benefit of the respective parishes.

The Award sets out the names of persons in the respective parishes who are entitled to stints or rights of pasturage and the particular properties in respect of which rights were claimed and to which properties they are now appurtenant.

At the present time there are 2,739 stints of which 1,085 are allotted to the Trustees of Chipping Sodbury Town Trust for the benefit of the inhabitants of Chipping Sodbury generally and the Stint Rate on that number is met out of the income of Chipping Sodbury Town Trust and in turn the Trustees obtain repayment from the parishioners who require the use of the stints, and the rights of pasture are for cattle, horses, donkeys and pigs, and according to the Award these rights were exercisable at all times of the year.

The Award provided for the following values of a stint:

- one donkey or pig to be taken of the value of one stint;
- one horse to be taken of the value of five stints;
- one head of cattle under two years old to be taken of the value of two stints;
- one head of cattle over two years to be of the value of three stints.

In order to prevent overstocking of the commons these values have now been revised by the Conservators as follows:

one donkey or pig	two stints
one horse	ten stints
one head of cattle under two years of age	four stints
one head of cattle over two years of age	six stints

Each year a stint rate is levied on the stint holders by the Conservators to meet the expenses of the management of the commons. The making of the rate is approved by the Minister of Agriculture and Fisheries and for the year 1956 the rate is 3s. 6d. per stint and no difficulty is experienced in the collection of the same.

A full time hayward is employed by the Conservators to look after the commons and the animals agisted thereon.

In addition to the income derived by way of the levying of the rate, wayleaves are granted to the Postmaster General and the local Gas and Electricity Boards in respect of poles erected on and underground cables and mains laid under the commons and licences are granted to owners of properties which abut the roadside wastes forming parts of the commons, to make footpaths, etc., over the said roadside wastes leading to the said properties. A yearly acknowledgment fee is received in respect of such licences.

Suitable byelaws and regulations have been made with the approval of the Secretary of State for the purpose of ensuring the proper user of the commons.

In 1942 the major part of the main common was requisitioned by the Minister of Agriculture and Fisheries and was ploughed up and properly drained. This resulted in the growth of bushes being got rid of and the commons are now in a healthy state of pasture. The Conservators from time to time apply a dressing of artificial manure to such parts as need same.

To ensure a fair amount of growth of herbage and to prevent damage to the commons the Conservators with the consent of the Home Secretary made a byelaw and new regulation limiting the depasturage of animals on the Common each year to the period 1st May to 30th November.

In order to prevent cattle from straying from the main commons owing to gates being left open at the main entrances, the Conservators have during the past three years constructed three cattle grids at three of the entrances and these have been found effectually to prevent the straying of the cattle. The Conservators were assisted financially in respect of this project by Gloucestershire County Council and some members of the public who used the roads passing through the commons and also adjoining agriculturists.

In accordance with their powers to allot portions of the commons for recreation, the Conservators granted a licence for the making of a nine hole golf course over part of the commons.

There are certain common gardens in the parishes referred to and it was enacted in the before-mentioned Provisional Order Act that the Provisional Order should not apply to the common gardens unless and until the same shall cease to be used as a common garden. The said common gardens remain with the lord of the manor but when such a garden ceases to be used as a garden it is the practice of the Conservators to exercise their jurisdiction thereover under the powers contained in the Provisional Order Act.

It would not appear necessary to amend the Provisional Order Act in respect of these commons. The benefits of the commons are appreciated by the persons entitled to the same and the present byelaws and regulations and the powers of management appear to be adequate to ensure the full use and proper management and administration of the commons.

ANNEXE A

GRANT BY WILLIAM LE GROS

Translation

To all who shall see or hear the present charter, William Grassus, first-born son of William Grassus, junior, greeting. Know ye that we have granted and by this our present charter have confirmed to our Burgesses of Sodbury and their heirs, the gift which William Grassus our first-born uncle made to them and by his charter confirmed, namely, that they shall have and shall hold all the liberties which belong and pertain to the laws of Bristol for themselves and their heirs of us and our heirs freely and quietly for ever as a free town, or more so, which is of the law of Bristol shall hold or shall be able to hold them, as well and freely or more so. And that whosoever has a burgage or any liberty belonging to a burgage in the before-named suburb shall have one cow on our common freely and quietly to him and his heirs of us and our heirs as the charter aforesaid of William Grassus our first-born uncle, which they have thence, testifies. We have granted both for us and our heirs to the said Burgesses of Sodbury and their heirs that courts shall be held in the aforesaid suburb as they were wont to be held in the times of our antecedents and this upon a Saturday only and not upon another day contrary to the will of the aforesaid Burgesses or their heirs without contradiction and impediment. So that we nor our heirs at any time shall be able to extort or exact anything else from the aforesaid Burgesses or their heirs contrary to the tenor of our present charter. Now this confirmation, grant and gift above written, we and our heirs to the said Burgesses and their heirs must warrant and defend against mortal men. Now for this confirmation, grant and gift, the above said Burgesses have given to me four marks of silver before-hand. And because I will that these our confirmation, grant, gift and warranty shall have perpetually strength, firmness and stability, we have strengthened our present charter by appending our seal. These being witnesses:—

Lord Ralph de Wylton, Lord Roger de Lokynton, Lord John de Galt' Marisco, Knights, John de Aketon,¹ William Grassus, junior, Jordan Bissop, William de Cingreson de Fremton,² Stephen de Aketon turrelle,³ Ralph le Cu de Little Sobbur,⁴ and others.

ANNEXE B

MANAGEMENT OF PROPERTY OF TOWN TRUST

(Extract)

28. The Trustees shall let and otherwise manage in conformity with the provisions of the Allotments Extension Act, 1882, such (if any) of the lands belonging to the Charity as are subject to the provisions of the Fourth Section of that Act. The Trustees may set apart and let in allotments in the manner prescribed by and subject to the provisions of the said Act any portions of the land belonging to the Charity other than buildings and the appurtenances of buildings.

¹ Acton.² Frampton.³ Acton Turville.⁴ Little Sodbury.

29. The persons mentioned in the Second Schedule hereto claiming to hold Acres in the Mead Riding, and the persons mentioned in the third Schedule hereto claiming to hold life interests in Spring Stems and Fall Stems in the Stub Riding and the Mead Riding shall be entitled to hold the same for their lives, and upon any of them dying and leaving a widow, she shall be entitled to hold the same for her life, but subject in the case of every such holder to—

- (a) Payment of the same dues as heretofore,
- (b) Continued residence in Chipping Sodbury.
- (c) Observance of all other customary rules and conditions in force on the 1st March, 1883, as evidenced by the minute book of the Bailiff and Bailiff Burgesses.

30. Samuel Matthews, who has heretofore acted as Hay Ward, shall be entitled to receive the same benefits and emoluments as heretofore out of the property under this Scheme, upon performing the same duties as heretofore to the satisfaction of the Trustees.

31. The Trustees shall manage the lands specified in the first Schedule hereto called the Mead Riding and the Stub Riding (including the unenclosed piece) for the benefit of the inhabitants of Chipping Sodbury, in the first place by allotting in rotation to 'Qualified Holders' as hereinafter described the rights over the said lands known as 'Acres', 'Spring Stems', and 'Fall Stems'.

32. 'Qualified Holders' shall be all persons whose names are for the time being on the Register hereinafter mentioned of Qualified Holders.

33. The Trustees shall as soon as possible make out and publish a Register of Qualified Holders, containing the names of all those of the parochial electors as defined by the Local Government Act, 1894, being the persons registered on such portion either of the Local Government register of electors or of the Parliamentary register of electors as relates to the Parish of Chipping Sodbury, who are and have for not less than three years been bona fide resident in that Parish. The precedence of the names shall be determined by lot.

34. The Register shall be revised by the Trustees annually upon a day to be fixed by them. Upon the annual revision the Trustees shall—

- (1) strike out the names of all persons who have ceased to be parochial electors resident as aforesaid, or who have been, under the provisions hereinafter contained, adjudged by the Trustees to be liable to have their names removed from the Register; and
- (2) add the names of all persons who have during the preceding year become parochial electors resident as aforesaid. These names shall be placed at the bottom of the Register in order determined by lot.

35. Any person whose name is struck off the Register shall thenceforth lose all right or interest over or in the said lands, and shall deliver up to the Trustees peaceable possession of any part thereof occupied by such person.

36. The said rights known as 'Acres', 'Spring Stems', and 'Fall Stems', shall be allotted by the Trustees to such qualified holders as may be willing to receive them in their order of precedence on the Register. No person shall be disqualified as a holder of any of the said rights by reason only of his being a Trustee.

37. An 'Acre' shall be a right (subject as herein provided) for a Qualified Holder, during his or her life, to occupy and enjoy one of the plots in the Mead Riding at a yearly rent of 10s. or one of the plots to be hereafter formed in the Stub Ridings at such yearly rent not exceeding 10s. as the Trustees, having regard to the relative value of the land, may from time to time fix, from the 16th December to the 31st August year after year, subject to such regulations as the Trustees may make with the approval of the Charity Commissioners.

The customary form of investiture with an Acre shall be no longer used, but each holder shall on receiving an Acre sign a declaration of willingness to hold it subject to the provisions of this Scheme.

38. A 'Spring Stem' shall be a right (subject as herein provided) for a Qualified Holder, on prepayment to the Trustees of a sum of 3s. 6d. to graze such beasts as the Trustees from time to time determine on the Stub Riding, or such part thereof as the Trustees do not reserve for additional Acres or for a recreation ground, from the 20th May to the 10th September in one year, subject to such regulations as the Trustees may make with the approval of the Charity Commissioners.

39. A 'Fall Stem' shall be a right (subject as herein provided) for a Qualified Holder, on prepayment to the Trustees of a sum of 1s. 6d. to graze such beasts as the Trustees from time to time determine on the Mead Riding, and such part of the Stub Riding as may be reserved by the Trustees for additional Acres, from the 10th September to the 15th October in one year, subject to such regulations as the Trustees may make with the approval of the Charity Commissioners.

40. No holder of an Acre or of a Spring Stem or of a Fall Stem shall sell, sublet, or part with it.

No holder of an Acre shall cultivate the plot occupied as aforesaid so as to deteriorate the quality of the land.

No holder of a Spring Stem or of a Fall Stem shall graze any beast upon the aforesaid Ridings which is not bona fide the property of such holder or of a member of the family of such holder.

Any holder of an Acre who fails to pay the rent aforesaid, and any holder of an Acre or of a Spring Stem or of a Fall Stem who violates any of the conditions aforesaid may be adjudged by the Trustees liable to be struck off the Register of Qualified Holders. The name of every such holder so adjudged liable shall be struck off the Register at the next revision either permanently or for such period as the Trustees think fit.

41. Subject as herein provided the Trustees may appoint a Hay Ward dismissible at their pleasure to superintend the said lands and to perform such other duties as they may prescribe at a salary to be approved by the Commissioners. In addition to or in lieu of such salary they may allot to the Hay Ward during tenure of his office one or more Acres or Stems.

42. The Trustees may reserve part of the Stub Riding for additional Acres, and thereupon may with the approval of the Charity Commissioners arrange to compensate the life-holders of Spring Stems mentioned in the third Schedule hereto for the curtailment of the grazing area by allotting to them additional Stems.

43. The Trustees may, if and whenever they think fit, temporarily suspend the allotment of any vacant Acre and let the same from year to year at the best rent obtainable or may sell any Stem by auction or tender, provided that in so letting or selling a preference shall be given to the offers of Qualified Holders if equivalent in the opinion of the Trustees to the fair value of the right to be sold or let.

44. The Trustees shall with the approval of the Charity Commissioners make such rules for the cultivation and enjoyment of any of the said lands as may best secure the convenience of all the holders and conduce to the improvement of the lands, and may enforce the same by fines on non-payment of which the offender may be struck off the Register of Qualified Holders.

45. The Trustees shall permit the inhabitants of the area co-extensive with that of the Ancient Borough of Chipping Sodbury to exercise the same rights of common as heretofore from the 15th October to the 15th December in each year over the Mead Riding and the Stub Riding on payment to the Trustees of the same dues as were payable to the Bailiff's fund.

46. The Trustees may with the approval of the Charity Commissioners sell to the owners of the lands known as Gaunt's Field and Mill Close the rights of common held in trust for and exercisable over those lands by the inhabitants of Chipping Sodbury.

Examination of Witness

MAJOR L. MONTAGUE HARRIS,

Called and Examined

1952. *Mr. Lubbock*: First may I thank you, Major Harris, for your paper. I think what we would like to have first, subject to anything else which you would wish to say, is a clear idea of what use is actually being made of the Mead and Stuh Ridings today.—*Major Harris*: As from the time of derequisitioning we have been either mowing the Ridings—the two of them—or letting for grazing. Our reason for so doing, which is set out, of course, in my memorandum, is because the 1899 Scheme cannot now be operated at all. The commonable rights are vested in the inhabitants of the Ancient Borough of Chipping Sodbury—not the parish of Chipping Sodbury, there are now possibly only approximately 1,000 souls comprised in the Ancient Borough. We find that among them there are only, perhaps, three or four inhabitants who wish to exercise the commonable rights between 15th October and 15th December.

1953. *Sir George Pepler*: Are those what you call lammas rights?—Yes. Some of those three or four users are merely butchers, who buy cattle and put them there for convenience.

1954. *Mr. Lubbock*: Do they put them there for accommodation?—Yes, but only from 15th October to 15th December. The trustees now wish to apply to formulate a new scheme altogether, because the present scheme, of course, is outdated. In the olden days each person at Chipping Sodbury, when they came on to the qualified holders' list, was entitled from time to time to an acre, and to use it for the purpose of obtaining hay for his cattle.

1955. *Professor Stamp*: Is that an 'acre' in the special sense as set out in the scheme of management?—Yes, but I do not want to take up the Commission's time by explaining it further. I have set out very clearly in the memorandum what the rights are or were, but the trustees cannot operate the scheme now as times have changed. What the trustees wish to do is to obtain a new scheme altogether, for the benefit of all parishioners of the Ancient Borough of

Chipping Sodbury, so they can all get something of value from the trust. We are blocked however by the existence of the commonable rights from the 15th October to the 15th December. We would like to let the Ridings on a long lease to, perhaps, the smallholdings' committee of the local authority, or to the Ministry of Agriculture, or whomsoever would wish to have a long lease. Perhaps the smallholdings' committee would wish to create smallholdings, and build hungalows and farm buildings in different parts. If a new scheme were established it would provide for the income derived from the Lease or Leases to be allocated for such purposes as the Trustees and the Charity Commissioners agreed upon for the benefit generally of the inhabitants of the ancient Borough of Chipping Sodbury.

1956. *Mr. Lubbock*: These purposes are, of course, outside our purview.—We must get rid of the commonable rights first, which are of practically no value. If they are of any value at all, they are only valuable to, say, just a few persons in Chipping Sodbury who may have cattle or horses.

1957. *Professor Stamp*: That means, does it not, that in reality you wish to become the freeholder, with a freeholder's rights?—Yes, in reality it means this: get rid of the commonable rights, and then the trustees will be free to manage these Ridings in such a way as to enable them really to apply the income for the benefit of the whole of the inhabitants of Chipping Sodbury, instead of just a few persons who have a few beasts or a horse or two. The area of the Ridings is about 188 acres. It is foolish that just a few persons should have the right to graze those acres with about five or six cattle.

1958. What provision is there for public access?—There is no restriction now, and there is not intended to be any restriction, unless of course the land is leased. The existing scheme does not provide for public access. It provides for the allotment by the trustees of such portion of the Ridings as they

think proper for the purposes of recreation, and they have already done that.

1959. *Sir George Pepler*: They have the power, have they, to make such allotments?—Yes, and they have in fact done so.

1960. *Mr. Floyd*: Where exactly are the Ridings?—You will find them on the right-hand side of the road from Chipping Sodbury to Wickwar.

1961. *Mr. Lubbock*: Were they successfully cultivated by the Agricultural Executive Committee during the war?—Yes.

1962. And have they now been put down to permanent grass?—Three years less.

1963. Do you cut the grass by contract?—We let it by tender.

1964. Is it deteriorating?—No, but it will.

1965. And is your contention that the original arrangement was to the benefit of the inhabitants, when they were all engaged in agriculture?—That is so.

1966. Now times have changed, and it is no longer fulfilling that function for which it was designed?—That is the short point. The obstacle arises from those two months' commonable rights.

1967. Now we come to Sodbury Common, where you say, among other things, that no parishioners now apply for allotments as field gardens. You have cattle grids. Have you fences as well?—Yes, it is all fenced, except roadside wastes and such parts of the common which about the main road leading from Chipping Sodbury to Old Sodbury including Colts Green and Coombes End Commons. It is a very well regulated common. It is true that no one applies for field gardens but we have, under the award, allotted to the trustees of Chipping Sodbury Town Trust over a thousand stints, for the benefit of the inhabitants of the Ancient Borough of Chipping Sodbury. The trustees have had, however, to resort to selling the stints outside, because they have to pay for them and the local inhabitants have no use for them to any extent as only a very few take cattle or horses to graze on the common. The trustees of the Town Trust have to pay 3s. 6d. per stint, and they recover the money by sale of

the stints to outsiders or anyone who will pay the rate for them. Unlike the Ridings when the benefit of the grazing, of course, only goes to the four or five to whom I have referred, I have no complaints at all about Sodbury Commons. The award is a good one, and the Provisional Order Act works well; the bye-laws are observed, we have an excellent hayward, and we have three cattle grids now to prevent straying from the common. As I have said it is a really well regulated common. Before the war, there was a vast area covered with hushes. Much of the commons were requisitioned by the Ministry of Agriculture, who cleared the hushes, drained them for us, and handed them back as permanent pasture. We have no complaints at all, except for one or two that have arisen from stint-holders, because the Conservators exercised their right of allotting part of the commons for play. They allotted part for a newly organised golf club of 9 holes, but that little trouble has now completely died down.

1968. Do you anticipate any trouble in maintaining the fertility of the land?—No. We make a stint rate every year to provide for that. We fixed a rate of 3s. 6d. per stint this year. We are not short of money, and do not anticipate being so owing to the power of levying a rate on the stint-holders to meet expenses.

1969. Do you apply fertiliser?—Yes, we do. We applied basic slag last year to 50 acres and to 50 acres this year. We do a part each year.

1970. Do you control the grazing by erecting temporary fences?—No. It is controlled by the number of stints which are allotted, and the value of the stint in stocking, as you will see from my memorandum, is so apportioned that the land cannot be over-stocked. In order to control the grazing, we made a new bye-law, which was duly approved, establishing a close season from 1st December to 1st May.

1971. *Sir George Pepler*: If you improve the land by rotation, do not the cattle tend to go towards the improved part, if there is no fencing?—We do not find that. Of course, Sodbury Common is more or less split up into three commons, part is the main

common leading from Chipping Sodbury to Horton, part known as Colts Green Common leading to Old Sodbury and King Grove Common, which is quite apart and lies in Old Sodbury, some distance away from the main common leading to Horton and Little Sodbury. But we do not find that the cattle congregate on the improved part to the neglect of the other part. Of course, they know it is there and they take advantage of it, but we do not find that the whole bunch goes there and leaves the rest ungrazed.

1972. *Mr. Lubbock*: You are in a very happy position.—Yes, we have no

complaint. We have a very good hayward and good conservators. They are practical men who know what is required to maintain a common to the benefit of the stinholders and they apply their farming knowledge to this end.

1973. *Sir George Pepler*: Is there public access?—The public have the right of access. There is no trouble about that and, fortunately, we find no rubbish left by them. We are very happy about it. The Conservators enforce their byelaws if they find they are broken.

Mr. Lubbock: Thank you very much, Major Harris.

(The witness withdrew.)

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MINUTES OF EVIDENCE

14

Wednesday, 31st October, 1956

WITNESSES

The Nature Conservancy



LONDON

HER MAJESTY'S STATIONERY OFFICE

1957

TWO SHILLINGS NET

List of Witnesses

WEDNESDAY, 31st OCTOBER, 1956

PROFESSOR W. H. PEARSELL, F.R.S., F.L.S., D.Sc.

*Chairman of the Nature Conservancy's Scientific
Policy Committee*

MR. E. M. NICHOLSON, C.B.

Director General

on behalf of the Nature Conservancy

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 31st October, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence Submitted by the Nature Conservancy

1. INTRODUCTION

The Nature Conservancy, established by Royal Charter in 1949 under the supervision of the Privy Council, are particularly interested in three aspects of the future of common lands. First, in view of their researches into soils, vegetation, animal populations and climate, the Conservancy will endeavour to bring out the nature and importance of the scientific considerations underlying the problem. Secondly, in view of their Charter responsibility 'to provide scientific advice on the conservation and control of the natural flora and fauna of Great Britain' the Conservancy will seek to show how, through the application of sound land use principles, it would be possible to reconcile the conservation of the fauna and flora with the various other interests in a more satisfactory treatment of common lands. Thirdly, in view of their statutory responsibilities for the creation and management of nature reserves and for surveying and advising on sites of special scientific interest, the Conservancy will in due course inform the Royal Commission of the distribution, extent and character of lands known to be subject to common rights which are also Nature Reserves or Sites of Special Scientific Interest. Before dealing with these three main aspects it is necessary to explain briefly the basic principles on which the Nature Conservancy's evidence rests.

2. PRINCIPLE OF MULTIPURPOSE USE

The Nature Conservancy fully recognise and accept the national necessity for reviewing the status of common lands with the object of putting them to the best use in the long-term national interest. These are, however, virtually our last uncommitted reserves of land and their disposition calls for objective and dispassionate consideration.

The Conservancy also recognise that in general no one interest in common land can be considered in isolation or be regarded as occupying an all-important role. The assignment of common land to arable cultivation, or to building, or for use as an airfield will automatically limit or even prevent other complementary uses. In the

past, common lands have not been assigned to any one exclusive user and generally multipurpose use of such lands is desirable.

Common land is land in ordinary private (or public) ownership over which certain defined local persons are entitled to exercise certain (often vaguely) defined rights, of which in present circumstances grazing alone is of any practical importance in most parts of the country; although rights to cut wood or turf (peat), to extract gravel, sand or even coal, and to fish, are still exercised in some cases. Commons are not owned in common nor have the general public any rights of access or use over them except where this has been otherwise secured (e.g. by Act of Parliament or by the National Trust or some other such body acquiring them). There appears to be great variation in different parts of the country as regards uses of commons by the public, by gypsies or by local people who have no ascertainable legal rights on them. In general, the Conservancy are in favour of public access but, in some cases, it has to take second place to other uses.

The high and increasing population density of England and Wales, and the growing diversity of claims on land emphasise the need to dovetail together, in all cases where it is possible, different forms of land use. For example, different parts of the same area may serve, either simultaneously or at different times, for grazing livestock, for growing trees, for public recreation, for nature conservation and even for limited military training. The different forms of land use when applied together may be mutually advantageous; correctly sited tree windbreaks, for instance, will provide not only timber but also shelter for grazing animals. The surviving common lands offer perhaps the greatest national opportunity for developing and demonstrating this principle of multipurpose use, the disregard of which in past enclosure awards may well have been partly responsible for the widespread resistance to any proposals for change affecting the common lands. The Nature Conservancy therefore hope that all parties interested in the fuller and more satisfactory use of common lands will join in subscribing to the principle that multipurpose use should be preferred in all cases where there is no compelling reason to the contrary, and that when assignment to one or other exclusive use is inevitable it shall, whenever possible, be for a limited period only. In this way, in the Conservancy's view, an incentive can be given towards improved land use policies, and some relief can be found for the embarrassing excess of demand over supply of land for various purposes.

3. PRINCIPLE OF MAXIMUM USE OF THE NATIONAL LAND POTENTIAL

To the ecologist it is axiomatic that a given area of land represents not a fixed quantity but a complex dynamic situation. Land use, together with land management (or its absence) are perpetually changing the soil fertility, water table, vegetation cover and animal life, either for the better or for the worse, according to the point of view. Reduced to its simplest terms the human land use problem is to obtain the greatest possible sustained dividend while enhancing (or at least maintaining intact) the 'biological capital' of the area, and especially the soil fertility. Certain land uses or methods of land management involve overtaxing or otherwise damaging the capacity of the area to produce plant and animal life, and thus cause loss of future biological productivity. Others maintain the 'biological capital' while deriving a regular biological dividend in livestock products, or in crops, including timber, or in game animals, or else a non-biological dividend in human recreation or training, or research, or in flood control or water supply, or some combination of these and other values. Decisions on land use can only be soundly based if they take account of the full range of potentialities of the land in question in relation to alternative sites, and if they mean choosing that land use or combination of land uses which is best calculated to secure the highest dividend in biological terms (or where appropriate in some alternative terms) and to maintain or enrich the biological capital. This principle has, of course, long been accepted as the basis of good farming. What is often overlooked is that it is equally applicable *mutatis mutandis* to uncultivated lands. Soil erosion, flooding, loss of water reserves, growth of animal and plant pests, and decline of fertility are among the consequences of failing to appreciate this principle and to act on it.

4. SCIENTIFIC CHARACTERISTICS

As a scientific body the Nature Conservancy would wish to outline in scientific terms the characteristics of common lands and to show the implications of dealing with them in relation to a set of accepted scientific principles underlying the use of land generally. Unfortunately, so far as the Conservancy has been able to ascertain, no such principles are recognised in this country, nor does the seriousness of their absence and the need for adopting them appear to be at all widely appreciated. The difficulty of the task is aggravated by the fact that common land cannot be classified according to one or more homogeneous and readily identifiable types of land use or of soil, but consists of a miscellany of nebulous categories having nothing in common except that by historical accident they have hitherto avoided being assimilated to any legally tidy status or brought under any single individual and unfettered control and management. Despite these difficulties the Conservancy consider that it would be indefensible to neglect this great opportunity for making a start with the definition and application of clear, sound, acceptable principles of land use, which may in time be recognised to apply more widely than to common lands alone. Right use of common lands is inescapably bound up with right use of the land as a whole.

5. DEFINITIONS

Ecology involves studying the relationship of animals and plants to one another and to their environment, included in which are soil, climate and various consequences of human interference. Ecologists have distinguished a number of different types of communities of living organisms, each occurring in a specific habitat. Some of these communities represent a 'climax' which remains relatively stable over long periods in the absence of catastrophic upheavals of either natural or human origin. The vegetation on some mountain tops, or a native oak or beech forest, are possibly examples of such a 'climax'. Other types are equally characteristic, but can only endure so long as they are regularly exposed to certain strong 'artificial' modifying influences. A good example is chalk grassland with its typical orchids, insects and birds, all of which may quickly lose their footing if effective grazing ceases (for instance, through myxomatosis killing off the rabbits where there are no sheep or cattle) with the result that unchecked woody vegetation covers the whole open area with dense scrub which may later develop into woodland.

Other vegetation types such as arable land or parkland are so drastically modified that they retain little interest to the student of natural communities. A distinct group is formed by inland waters with their tendency to become gradually fringed and then overgrown with reedswamp, fen vegetation, and eventually damp followed by dry woodland. Another group consists of such shifting and sometimes temporary natural environments as sand dunes and shingle bars, and salt marshes.

Ecologically regarded the lands still subject to common rights in England and Wales are most unevenly distributed between the various British vegetation types. They are rich in examples of bogs, moorlands, lowland heaths and grasslands, but poor in various other types.

6. LAND CAPABILITY CLASSIFICATION

Before examining in more detail the different ecological characteristics of common lands, it is necessary to explain briefly how land capability classification can be used as an aid to the reaching of wise land-use decisions for particular localities. Land capability classifications have proved to be of considerable value, notably in North America, and such classifications may be applied with advantage to common lands in England and Wales. Essentially, the procedure is to describe the local climate, topography, vegetation and soil of the area under consideration. From field and laboratory data it is possible to determine the characteristics of the soil as regards:

- (i) stability and structure;
- (ii) capacity for holding nutrients and water;

- (iii) fertility status ;
- (iv) suitability for specific or multiple uses ;
- (v) economic productivity in terms of most suitable usages.

The results that can be anticipated from prolonged cropping, grazing, tree-growing, or other uses should be taken into account. The land is then zoned broadly in descending order of value within three main groups. These are:

A. Land which is cultivable but ranges widely in fertility ; capable of carrying various arable crops ; or rotational grassland or permanent pasture of variable quality according to the prevailing environmental and economic circumstances.

B. Land which should not be cultivated but is suitable for the poorer grades of permanent pasture (rough grazing) or timber production.

Group B will include such special categories as land suitable for (i) commercial timber production, (ii) establishment of trees for shelter purposes at both high and low altitudes, (iii) the growing of trees or other kinds of vegetation (grasses, herbs and legumes) for the specific purpose of land rehabilitation.

C. Land unsuitable for economic use as arable, grazing or timber production but possibly suitable for amenity and recreation, defence or communications, nature conservation, sport, water conservation and other uses independent of agriculture and commercial forestry.

Within each of these main groups finer distinctions can be made. For example, some land will stand seasonal grazing at low stocking densities although it rapidly deteriorates under unrestricted use by livestock. It is not, however, necessary to elaborate the categories further for the present purpose and it should be borne in mind that assignment to any category is equivalent merely to professional advice that the land in question can be so used with advantage and without serious risk of injuring it. The decision whether it should in fact be put to the highest use for which it is suited depends on national policy and immediate considerations, just as in the case of the recurrent problem whether to use a particular area of good agricultural land for building. References to land capability groups in what follows should therefore not be taken as recommendations for actual use, but simply as indications of the limits within which arguments over particular areas can reasonably be pursued. Broadly speaking, any land can be allocated to a lower use than its capability classification, if that course is found worth while, but no land rightly classified can be put to any higher use, except for short periods and at the price of subsequent trouble in the form, for example, of soil deterioration or erosion.

In briefly describing the different main ecological types of common land, the Nature Conservancy are unfortunately not in a position to estimate the acreage belonging to each, but will endeavour to indicate the relative orders of importance, and to mention some of the main existing land management problems and conflicting land uses on each, as well as indicating some of their salient biological, soil and climatic characteristics.

7. WOODLANDS AND SCRUB

Ecological Types

Woodlands affected by common rights fall into several distinct groups. Large browsing mammals such as deer no doubt played a significant part in the development of primitive woodlands. Traditionally, during the long period of forest clearance for farming, it was normal for the cattle, pigs, sheep and other livestock to be allowed to forage for themselves in the woodlands. The fact that natural regeneration was hindered or made impossible was not felt as a disadvantage, as there was still ample timber for the limited constructional and fuel requirements and for game cover, although conflicts began to arise in the Middle Ages, notable in the management of Royal Forests. It is now universally recognised as bad land management to allow unlimited grazing in woodlands by livestock, neither the trees nor the beasts being capable of thriving indefinitely in such conditions. Nevertheless, where common grazing rights in woodlands exist the temptation to use them to the limit

is strong, especially in mountainous districts where there is inadequate winter keep without their assistance and where shelter is also welcome. The importance of woodlands in providing shelter for live stock at high altitudes or in extreme climates is fully recognised. It is visualised that small dispersed groups of woodland could be established on high altitude commons for this specific purpose. Some groups could be completely isolated from grazing while others were grazed on a long rotation—the non-grazing phase being of sufficient duration to allow for regeneration of saplings. This treatment could be extended to existing woodlands.

Some of the surviving fragments of native oak woodlands, especially in Wales, have been reduced to a sad state by grazing, but it must be recognised that the existence of common rights has also done much to protect the trees from direct human interference, and thus to ensure their survival. Even so near London as Epping Forest the practice continues, although now on too small a scale to interfere seriously with silvicultural management. On other common lands, especially near large towns, the cessation of the practice has in turn created further problems, since the necessary conditions and funds for silvicultural management are lacking and the former woodlands and former grasslands tend to degenerate into a dense, almost impenetrable thicket which may be as undesirable from the standpoint of nature conservation as from that of the forester, or of the rambler who finds that there is free access in theory but not in practice.

Given enough time such woodlands should revert to high forest, but the unfortunate legacy of over-grazing, coppicing, pollarding, charcoal burning and repeated selective felling of the best seed-trees could probably exert its effect for centuries in the absence of deliberate skilful rehabilitation. Regeneration, although often copious, is rarely of trees suitable to recreate high forest of indigenous species. (It is still too early to assess whether rabbits will continue scarce and whether the result will be a favourable alteration in the terms of competition between tree species.) Another unfortunate ecological result of these neglected woodlands and scrub areas is the part played by them in harbouring bird and mammal pests, particularly carrion crows, jays, magpies, woodpigeons, grey squirrels and still to some extent also rabbits. Common woodlands are no different in these respects from many derelict or neglected private woodlands or coverts, but their proper management presents even greater obstacles.

The acreage of woodlands subject to common rights is not known to the Conservancy, but it seems to be appreciable in Wales, southern and south-eastern England. A number of commons not marked as woodland on the Ordnance Survey have, in fact, become scrub woodland, sometimes through colonisation by self-sown pines or birches. Wooded commons, except in the early stages of scrub growth, appear to suffer surprisingly little from fire, considering their dense stocking with trees and the general lack of fire precautions. Where not used for grazing their main uses appear to be for sport or poaching, picnics, rambling, natural history pursuits and various other activities by members of the public. Generally speaking, the more important scientific values are found where they are survivals of primitive woodland or on particularly favoured soils, as in the Cranham-Birdlip area of the Cotswolds. All such woodlands are clearly likely to rank at least in Group B of the land capability classification in para. 6, and some, no doubt, could qualify for inclusion in Group A. While some of the recently colonised scrub might best be cleared back to grassland the majority of such woodlands would appear to be most appropriately considered for conversion to high forest of deciduous trees, except where the soil is suitable only for conifers, or in the relatively few cases where they should be retained untouched as museum pieces. Attention should be especially directed to the valuable and promising experience gained by the City of London Corporation in the management of large woodlands subject to common rights in Epping Forest during more than two generations. This could provide a useful model and starting-point, if allowance were made for the features resulting from the exceptionally heavy public use.

8. ALPINE TYPES

Common rights extend over mountain areas, sometimes supporting what is known as arctic-alpine vegetation, in the Pennines (for example at Great Dun Fell on the

Nature Conservancy's Moor House Nature Reserve at 2,780 feet) and in the Lake District (e.g. Grasmoor and Hobcarton, 2,000 to 2,700 feet) south-western upland moors (e.g. Dartmoor) and Wales. The acreage involved cannot be very large and some of it may fall either within Group C or at the lowest level of Group B in the land capability classification in para. 6. The climatic conditions are extremely severe and the soil almost without exception poor. Recreation in such forms as rambling and mountaineering is the most widespread use, and locally there are important nature conservation interests, but it seems unnecessary to elaborate as, in the case of England, few practical problems of land use or management arise. In Wales, high altitude terrains are subject to a relatively high grazing pressure, this being due to special features of geology and climate. Land use problems exist, particularly where common rights prevail, and there is a need to equate grazing pressure to the requirements of soil and vegetational rehabilitation and conservation.

9. BOGS AND MOORLANDS

The term 'moorland' is here used in its commonly recognised sense as 'any tract of unenclosed land (generally elevated) with acid peaty soil and not used *primarily* as pasture'. It does not include hill pastures or limestone grasslands which are referred to below (paras. 11 and 12). This group includes places supporting some of the most interesting types of British vegetation. The preservation of an adequate series is becoming urgent both for conservation and research. Probably none of them would reach category A except in certain cases where wholesale stripping off of the peat cover, accompanied by land drainage, could afford access to a rich underlying agricultural soil, but in England and Wales this has already been done in all but a few places where it would be practicable. The largest acreage covered by common rights is probably in and around the Pennines and on the Welsh mountains where, with the co-operation of hill farmers and foresters, there is little doubt that the land at least up to about 1,500 feet could be afforested to the advantage of both parties. Although much research has been done on peat exploitation in Scotland and in Ireland, the subject is relatively untouched in England and Wales, apart from the investigations recently begun by the Nature Conservancy at Moor House Field Station in Westmorland. Before any sound policy can be formulated many technical points will have to be cleared up. (See para. 16 following.) One of the most important practical aspects is the question whether there is a satisfactory way of replacing the role played by peat as a sponge for retaining rainfall and helping to equalise stream flow, thus assisting both water supply and flood control. In order to provide young succulent forage for sheep (and grouse) the practice of burning the old vegetation has become established on this type of land. Whilst it may be difficult, at present, to visualise other economic methods of utilising these areas there is adequate evidence that excessive burning, and grazing, has often resulted in a deterioration of the vegetation and the promotion of peat erosion. The Conservancy have discussed the question of heather burning with other organisations directly interested and as a result a statement was issued incorporating the views agreed at the meeting. This is attached as Annex F. It will be seen that research on this matter is continuing.

Much of the land in this category in the north of England is utilised as grouse moor in addition to the grazing it provides.

10. CHALK GRASSLANDS

So far as can be ascertained, relatively few of these are subject to common rights, and some are now grassland only in name since the decline of grazing, first by cattle and sheep and more lately by rabbits, has led to their becoming overgrown with scrub. These grasslands would all be graded in A or (where they slope steeply) the highest levels of B in the land capability classification and their future management is of exceptional importance. Owing to wartime and post-war ploughing-up campaigns and the increase of heavy agricultural machinery, reinforced by indiscriminate enthusiasm for land reclamation and generous subsidies, there has been a most serious loss of scientifically interesting chalk grasslands during the past fifteen years. The Conservancy would strongly urge that every effort be made to preserve and to manage, on traditional lines, good examples of surviving chalk

grasslands which have thus far escaped destruction through the existence of common rights. It is particularly unfortunate that owing to local circumstances the full extent of the grazing which is so necessary for the quality of these pastures has recently not been attained in a number of instances, and this failure has aggravated the other pressures towards ploughing up, even on sites where this treatment carries with it dangers of eventual soil erosion on steep slopes.

11. LIMESTONE GRASSLANDS AND LIMESTONE PAVEMENTS

Most of the limestone rocks of this country must primitively have carried woodlands, mainly of ash. Removal of this woodland by clearance or grazing has given either grassland or, where the limestone is much fissured, bare limestone pavement. The limestone grasslands are often rich in plant species, and of high agricultural value, and should, wherever possible, be retained under grazing for which they are excellently suited. The limestone pavements, on the other hand, which are at present quite barren could, with suitable management, be made to carry a woodland cover once more as is suggested for Ingleborough Fell. (See Annex B.) Such woodlands would, on the one hand, conserve many of our native limestone shrubs, as well as a number of interesting woodland herbs which at present are found as relics in the fissures of the limestone. On the other hand, while possibly not likely to produce marketable timber, they would have value as windbreaks.

12. OTHER GRASSLANDS

This heading groups together many areas which would primitively have borne very diverse types of vegetation, the only common character being that the soils were non-calcareous. Their usage by man has, however, converted them all to some form of grass sward. They range from lowland pasture, like Port Meadow at Oxford, and the carefully managed common pastures of Cambridgeshire,* through the rough grazings of the foothills and lower slopes, to the very poor quality land of higher ground which merges into the true arctic-alpine grazings. Reference has been made to these latter in paragraphs 8 and 9. With a few exceptions, such as Port Meadow, they are not in general of great interest to naturalists, and their ecology is difficult to interpret because their present state depends so much on their past treatment, of which we have very few accurate records.

Many examples of what is commonly described as marginal land fall into this category, and the investigation of their characteristics and their potential use lies in the field of agricultural research. Much attention is being devoted to the economic possibilities of these lands by various research organisations such as the Grassland Research Institute, the Welsh Plant Breeding Station, and the Hill Farming Research Organisation. For these reasons no attempt will be made here to discuss their ecology, nor to outline the main problems connected with them. We would only wish to emphasise that in the grazings at higher altitudes the question of soil deterioration is one of great seriousness. There is often considerable controversy as to the best form of land use, and it seems that these areas offer special opportunities for integrating forestry and farming. (See the proposals for Ingleborough Fell in Annex B.)

13. LOWLAND HEATHS

The area of commons of this type is substantial, especially in south-east and south-west England, East Anglia and part of Wales, where rainfall does not exceed about 35 in., and where soils may be sandy and permeable. Such heathland commons are particularly numerous in Norfolk and Suffolk and, although mostly small areas, collectively they form an extremely valuable asset as relics of animal and plant communities previously widespread but of which few examples now remain. In East Anglia these sites can be divided into 'wet' and 'dry' heaths. The former are mostly bog communities of great interest to the ecologist and although they are of very low agricultural value attempts at reclamation have been made. All the commons on lowland heaths are of scientific value, the most important having been scheduled

*Recently, the subject of careful survey by the County Planning Department of Cambridgeshire.

as Sites of Special Scientific Interest, and the Conservancy would feel bound to resist any reclamation of these S.S.S.I.s.

Land hunger and modern methods of reclamation have made these heaths much sought after by farmers, foresters, the defence services and other interests such as atomic research. As a result few, except those subject to common rights, have survived; and it is largely upon the latter that the survival of many interesting animals and plants characteristic of these habitats now depends. Although some have become overgrown with pines and birches, most have remained relatively open, partly owing to frequent fires started either accidentally by the public or deliberately by commoners with the intention of improving the grazing. In other cases, heaths have been maintained as sheep walks for a long period of time and this has helped to prevent the growth of hushes and trees. In terms of land capability it is doubtful if many of these would repay reclamation for arable in the absence of heavy subsidies or equivalent incentives in guaranteed prices or offsets against farm profits; nor are they attractive for pasture in their present form in comparison with alternative possibilities of better use of grazing at present under-used or neglected. Many of the drier heaths, however, are undoubtedly suitable for growing trees, although usually not hardwoods; but in view of their scattered nature and small size, it is doubtful whether any substantial transfer of lowland heaths to timber production would be a sound policy.

Fire risk and the dangers inherent in planting large, even-aged, unmixed stands of exotic conifers, vulnerable to the eventual development of plant diseases, pests and parasites, are at their maximum in such conditions. Moreover, most of these heaths are prominent among the last remaining accessible playgrounds for large populations in the most crowded parts of England and in popular holiday areas. Since so many of the Downlands were ploughed up and so much other land has become built up or inaccessible through agricultural or forestry development or Service requirements, the area of open spaces is falling to danger level in some regions and the concentration of users on the remaining sites is giving rise to serious problems of public control, reconciliation of conflicting demands and protection from erosion through excessive trampling or the driving of vehicles off the highway. The problem of training the armed forces, including week-end Territorials, also needs to be realistically faced. Many commanding officers appear to be counting upon facilities which are increasingly difficult to grant without serious embarrassment, for example, on Nature Reserves, but which clearly must be available somewhere if the defence of the country is not to suffer. It is, therefore, the view of the Nature Conservancy that only in special circumstances should lowland heaths, subject to common rights, be permitted to become alienated to any agricultural or silvicultural use which would further limit the area of accessible open spaces and of heathland vegetation. However, in some cases restrictions on access caused by afforestation, etc., may be only temporary, and the end result may be equal or greater 'enjoyment'.

The dovetailing together of the many conflicting demands on lowland heaths requires concerted examination. Many of these heaths are at present suffering severely from damage due to misguided or uncontrolled burning, inadequate control of vehicles, litter, dogs and destruction of flowers and other vegetation, and general neglect.

14. INLAND WATERS, FENS AND MARSHES

Inland waters tend to pass through stages of succession involving the encroachment of fringing vegetation, silting or choking of open water, development of fen and ultimately transition through alder and willow carr to oak or other dry woodland, or in some conditions to valley bogs such as are found in and near the New Forest. The earlier stages of such hydrosere are often of special amenity and scientific interest and some of the later stages have considerable value for ecological research and nature conservation, the needs of which require an adequate number of such examples to be preserved. In other cases, skilful and undivided management is necessary to prevent such undesirable effects as are confronting, for example, those interested in sailing on the Norfolk Broads which are becoming closed by aquatic vegetation and silt. Where common rights exist in such situations the clarification of future management policy is rendered difficult if not impossible.

15. COASTAL TYPES

Salt marshes, sand dunes and other unstable and immature types are mostly coastal or estuarine. They are often of outstanding scientific interest, and are also attractive for afforestation, agricultural reclamation, sport and recreation and other purposes such as military training. The acreage is very limited and much of it has already been spoilt or converted to exclusive uses. In so far as common lands are concerned the same objections to alienation apply as in the case of lowland heaths.

16. GENERAL SCIENTIFIC AND CONSERVATION ASPECTS OF COMMON LANDS

Although common lands are so varied in character they tend to possess certain features which render them of unusual interest for ecological research and nature conservation. They largely owe their status as common lands to the fact that they had not hitherto been claimed for intensive exploitation by any individual and that they were mainly late in losing their primitive or 'natural' character. For this reason, and also because it has never been possible to subject them to systematic reclamation, they tend to serve as reservoirs for species, probably once widespread, which are now extinct at least over large areas. On many types of common, custom and control have placed insuperable barriers in the way of disturbing the surface of the soil, draining of pools or damp areas and clear felling of woodlands, all of which processes are apt disastrously to interrupt the continuity of animal and plant communities. Common lands are therefore disproportionately rich in examples of plant and animal communities which have largely been eliminated from surrounding localities, and which help in elucidating soil, climatic and other ecological conditions and their evolution. In some cases, past practices on common lands have created artificially modified conditions which have been maintained long enough to give rise to a characteristic fauna or flora. Examples occur in connection with peat and sedge cutting, pollarding trees and mowing. Such deviations have thrown light both on ecology and on management techniques.

Further, while it is known in general that in the absence of interference certain vegetation types, for example, are succeeded by others, the pace and limitations of such ecological succession are by no means completely understood and it is often on common lands that such spontaneous changes can best be observed.

By no means all common lands are of high scientific interest but, in addition to their value as living museums and open-air laboratories, common lands contribute an increasing proportion of the rapidly diminishing number of living illustrations which bring home to both townsman and countryman something of what the natural landscape was like. This is a perennial source of enjoyment, refreshment and stimulation but it also has a wider significance. With the spread of mechanical and chemical methods and the subjection of both agriculture and of forestry to increasingly artificial processes, much of the traditional knowledge and wisdom of working with instead of against nature is being lost. Great Britain led the world in such advances as the integration of silviculture, agriculture, sport and wild-life conservation on the carefully planned and landscaped country estate, and in the planting of windbreaks, hedgerows and hedgerow trees. Yet, almost daily, we see examples of how what was lately and rightly valued and relied upon in land use and land management is becoming neglected and forgotten, and how practices which would once have been rejected as shortsighted and harmful are gaining ground. It may be necessary before long to re-educate the nation in the principles of trusteeship for the future and of sound land use and land management which not so long ago appeared a permanent and ineradicable part of the English heritage. From this standpoint the widely fashionable idea that it is a sign of progress to destroy and remould every reminder of the origins of our landscape and our rural economy may need to be reconsidered if posterity is not to view this generation's treatment of the countryside as harshly as we view the towns of the industrial revolution, about which the nineteenth century felt equally complacent.

In this connection the Nature Conservancy wish to invite the attention of the Royal Commission to the very backward state of scientific knowledge regarding many of the land-use problems affecting decisions on the future of common lands.

For example, the deliberate burning of the vegetation on commons is extensively practised, yet there are good reasons for believing that in the long run such practices lead to a deterioration in the fertility and productivity of the land. Whilst burning may be an expedient method of exploiting such land, we need to learn how to manage it efficiently without detriment to future land users.

Many upland common lands receive high rainfalls, but there is little detailed knowledge of the proportion of the precipitation evaporated or transpired by vegetation on the spot, how much goes into stream-flow and the recharge of groundwater and how much is retained and used in plant growth under different types of vegetation cover and different land management practices such as drainage, burning and grazing. On the answer to these questions may depend whether or not it is necessary to drown thousands of acres of good agricultural land in the valleys and lowlands to meet water requirements which might, with better watershed management, have been met out of increased minimum flows of streams coming from the hills.

Again we know that not many centuries ago woods of sizeable trees grew up to 2,000 feet and over even in the north of England, but we do not know why the existing tree-limit is as low as about 1,500 feet, nor what are the possibilities and what might be the rewards of renewing tree cover at higher altitudes, even if initially the extraction of timber had to be ignored in favour of soil improvement, better use of water resources, shelter for livestock and control of floods.

Many high-lying common lands also are smothered under an apparently recent and doubtfully useful covering of peat, much of which is rapidly eroding. Could modern methods be used to strip this peat and convert the energy into electricity? If so, in what conditions would it be worth while, having regard to the varying fertility of the underlying mineral soils and to the need for watershed control?

Many common lands have suffered serious losses of fertility in modern times. What are the causes of these losses and how can they be prevented? Are they still continuing, and if so at what rate?

What are the economic and social possibilities of integrating forest and agricultural holdings instead of continuing to force a choice of one or the other? Can a model scheme or schemes be prepared for one or more typical areas of common lands which might afford a reliable guide to future policy? (Such projects are outlined in Annexes B and C.)

The Nature Conservancy have in progress researches on all the problems mentioned above, but these researches have only recently begun and are on a very small scale in relation to the magnitude of the problems and the economic potentialities involved. It may well be that as and when the answers to these and other fundamental questions become known the problem of the future of common lands may in some respects look different from what it does today.

Among the most comprehensive scientific investigations so far carried out on the fauna and flora of a particular area of Common Land is the London Natural History Society's Survey of Bookham Common which has been in progress from 1941 to the present time, and the results of which have been published in the 'London Naturalist' from 1942 onwards.

No reference has been made in this report by the Nature Conservancy to the practices of other countries, but the Conservancy suggest that the Commission might find it useful to take these into consideration.

17. EXISTING COMMON LANDS PROBLEMS AFFECTING NATURE CONSERVATION AND RESEARCH

Many of the existing problems under this heading have already been mentioned above. This paragraph will simply summarise these aspects of the present situation which cause concern to the Nature Conservancy and which they would hope to see suitably dealt with by the Royal Commission in their recommendations.

1. The traditional functions of common lands are in many cases in abeyance. Consequently the condition of the common, stock to be carried, etc., are no longer

assessed and agreed upon by local consent. There is, therefore, a tendency for the number of sheep on any particular common to be more a matter of chance than design, with consequent excessive or under-grazing. On some commons chiefly in southern England grazing has either ceased or diminished owing to commoners no longer keeping livestock, or fearing traffic accident on unfenced roads, or fearing infection of cattle with tuberculosis. This leads to the spread of scrub woodland, and this in turn to infestation with pests and loss of grassland plants and animals. Similarly, peat cutting, sedge mowing and other practices important to maintenance of former conditions are dying out.

2. At the same time the traditional machinery for the management of common lands—e.g. Commoner's courts, etc.—appears in many cases to have broken down and the commoners themselves are often untraceable. This means that even projects which would be generally agreed, such as fencing a small plot for research, cannot safely be proceeded with because it is impossible to trace persons competent to signify formal agreement. In effect much common land is under the equivalent of untraceable absentee landlords. In some cases where traditional institutions have been maintained, they appear to be working very well and to deserve retention.

3. In other cases where commoners are still active they often appear to function purely as a defensive group and no effective steps seem to have been taken to assist them to appreciate and to deal responsibly with problems of land management. The attitude of such commoners is often explicable in terms of past or recent attempts at encroachment, and appears to call for a broader and more understanding approach.

4. Many commons are largely used or even dominated by non-commoners, often from distant towns, who behave as they please. In such cases, provision for public control and education is needed, particularly as regards litter, pollution, damage to vegetation, indiscriminate driving of vehicles beyond all reasonable needs for getting off the highway, and the careless or mischievous starting of fires. The commoners are clearly unwilling and unable to cope with this situation nor have they the necessary financial resources and powers.

5. Many commons are suffering from chronic neglect of the ordinary functions and obligations of land management, partly through ignorance and lack of mechanism and finance, and partly through fear of opposition and lack of incentive. If the traditional mechanism had not fallen into disuse the problem would not be so great. There is a need for some local body which would accept responsibility for proper and necessary management in relation to clearly formulated management objectives.

18. RELATION OF NATURE CONSERVATION TO OTHER INTERESTS IN COMMON LANDS

It may be desirable at this stage to expand what has been said about multipurpose use. A number of commons exhibit no features of sufficient interest to call for comment here or to require any consideration from the standpoint of nature conservation. As regards the rest:

Eleven areas subject to common rights are National Nature Reserves (including two in Wales).

At least 16 areas subject to common rights are proposed National Nature Reserves, in some cases now under negotiation (including five in Wales).

Roughly 200 areas known or believed to be subject to common rights have been notified by the Nature Conservancy to local planning authorities as Sites of Special Scientific Interest under Section 23 of the National Parks and Access to the Countryside Act, 1949, but in many cases the status regarding common rights is obscure or uncertain, and this figure is liable to revision. It includes 25 sites in Wales. Some of these areas are virtually managed as Nature Reserves by other organisations, notably the National Trust, but the majority are in private ownership and the co-operation of owners of the soil has been sought in maintaining their scientific

interest, which may be on account of their flora and fauna or for physiographical, geological or other special reasons.

The above areas, however, represent only selected samples of the main types and their choice has been based on the assumption that the existing peculiarities of common land would automatically give protection from development or reclamation to other areas subject to common rights. It is now necessary to envisage the possibility, following the Royal Commission's recommendations, of fresh legislation which might endanger many if not all such areas, and the Nature Conservancy must therefore reserve their position regarding nature conservation interests until it has been possible to review and list those over which the Conservancy would wish to be consulted in the event of any proposals for change. The Conservancy are, however, ready to look at each case on its merits and while they must oppose certain types of change they expect that nature conservation requirements can usually be fitted in with such other uses as do not, directly or indirectly, destroy or drastically change the type of vegetation represented. The main considerations governing such compromises may now be outlined.

19. RELATION OF NATURE CONSERVATION INTERESTS TO AGRICULTURE

Grazing up to the reasonable stocking capacity of existing grassland by cattle, sheep and horses would, in nearly every case, have the support of the Nature Conservancy, on the understanding that fencing would be done to prevent livestock from straying either on to highways or on to neighbouring areas, for instance of woodland, where their presence would be injurious. It is hoped that in many cases sound grazing management would produce swards of an improved quality ultimately leading to soil amelioration. On those commons carrying interesting flora or fauna the Conservancy would not normally favour ploughing and reseedling or drastic methods of land drainage, or indiscriminate spraying or heavy applications of fertiliser.

Careful and selective removal of scrub would be supported where it is due to modern neglect and can be accompanied by assurance of adequate grazing in future. The transfer, in time of peace, of common lands of scientific interest to regular cropping as arable would not be favoured.

Effective measures for control of rabbits, grey squirrels, rats, carrion crows and woodpigeons would be favoured provided that they are not carried out by means injurious to the rest of the fauna and flora.

Drainage of interesting small bogs and unnecessary resort to burning or running heavy or tracked vehicles over the land would be regarded as open to strong objection. It is hoped that, where fencing proves necessary, barbed wire would normally be avoided and adequate gates and stiles would be provided. Sources of pollution which might injure the flora and fauna surviving in adjoining areas should be strictly controlled.

20. RELATION OF NATURE CONSERVATION INTERESTS TO FORESTRY

The Nature Conservancy would welcome a measure of discriminating use of common lands for the growing of forest trees for timber, and, especially on upland areas, for provision of tree cover to provide shelter, to conserve water resources, to control floods and erosion, and to rehabilitate and improve soils. The Conservancy would hope that native hardwood trees would be planted wherever conditions are sufficiently favourable, but recognise that on considerable areas resort to non-native conifers would be necessary. Both on ecological grounds, and to reassure public opinion, the Conservancy would hope to see mixtures planted rather than extensive rectilinear stands of one species all of the same age.

The Conservancy attach great importance to the possibilities of combining afforestation with modernised farming, especially on the extensive and inadequately used hill lands subject to common rights in northern England, Wales and elsewhere. The way to rehabilitate them is to restore the tree cover suitably interspersed

in time and space with farming and its associated improved grassland, and with recreational and other uses as topography, soil and climate indicate. The relation of trees to water conservation also needs further consideration, taking into account varying rainfall, geology and topography.

The Conservancy would not favour extensive afforestation of the limited remaining areas of heathland in southern and eastern England, for reasons already indicated.

21. RELATION OF NATURE CONSERVATION TO BUILDING AND OTHER NON-AGRICULTURAL DEVELOPMENT

The Conservancy appreciate that in certain cases some minor alienation of common lands for highway and airfield improvements, for defence works and even for educational requirements may continue to prove necessary. Much lasting damage has, however, already been done in this way, especially during the war, and the Conservancy trust that any new legislation for common lands will continue to safeguard them to the fullest possible extent against any avoidable alienation for such objects.

22. RECREATION AND AMENITY

Although these are not among the original purposes of common lands they are in practice often among the most important of current uses and they are still rapidly increasing. Distinction may be made between traditional field sports, such as hunting, shooting, fishing and riding on the one hand and the more modern uses, principally by visitors arriving by road from centres of population, such as picnicking, playing games, flying kites and model aircraft, and camping. There are also certain activities such as blackberrying, gathering moss for nurseries, picking flowers and bird-nesting which involve direct exploitation of the fauna or flora and, in addition, there are the purely destructive or damaging activities such as depositing litter, causing pollution, starting fires, or driving vehicles repeatedly and indiscriminately over the common.

Commons are also visited by organised parties of Boy Scouts and Girl Guides, students, school-children, rambles and others, sometimes for educational purposes and sometimes for exercise and recreation. While such activities are of overriding importance for certain commons, there may be other commons, even closely adjoining, which are rarely used in this way, while large acreages of land, subject to common rights, are too remote or unfavourable to attract visitors.

Following the principle of multipurpose use, it should normally be possible to combine all, or nearly all, legitimate activities in this field with the requirements of nature conservation, provided that adequate public control is ensured on areas where the volume and nature of public use calls for it. In addition, various other users such as military training, grazing and limited tree-planting could be fitted in to the same pattern, although it is important to make a realistic advance assessment of the likely intensity of public use to be expected with growing leisure and increasing road transport. It would be undesirable to initiate or encourage activities which, if present trends continue, will become impossible to maintain within a decade or two.

23. POSSIBLE PATTERNS OF MULTIPURPOSE USE

In some cases, particularly on extensive commons, it may be possible to set aside for a period areas to be fenced for grazing or to be temporarily closed for afforestation, but this will normally be practicable only where recreational and other public uses are either absent or quite subsidiary. Where public use is important, the problem is largely one of public control which in turn depends largely on finance. This aspect is dealt with later. It is suggested that the guiding principle should be that no common should be treated as a no-man's-land in which damage or uncontrolled exploitation can be done with impunity. Illegitimate uses should be restrained while legitimate uses should be studied in consultation with those concerned and should be provided for in a management plan which may either be detailed or left simply in outline according to requirements. It should be recognised in the management plan that unforeseen changes in water table, soil and vegetation

may alter the character of the land unless such possibilities are scientifically examined and suitable measures for ecological management are incorporated in the plan. Where necessary the Nature Conservancy would be glad to help with advice on such matters as required.

24. FORMULATION OF A NATIONAL POLICY

It would cause endless difficulty and delay if the merits of every proposal for change of use of common land had to be argued afresh on every separate occasion. On the other hand, it is essential that all interests concerned, including the owner of the soil and the holders of the common rights, should be given full and fair opportunity to participate in any scheme for changed use or management and that compensation should be payable should existing rights suffer injurious affection from any new arrangements. It therefore seems desirable that a national policy towards common lands should be formulated and officially adopted in order that all concerned may know within what limits and subject to what safeguards any revised arrangements are to be considered. The Nature Conservancy hope that such a statement would include the principles of maximum use of the national land potential, and give preference to multipurpose use over exclusive use. It also seems highly desirable that in considering each particular scheme account should be taken of the use of other commons in the neighbourhood or so situated as to form possible alternative sites for some of the activities concerned, in order that the outcome may not only be as satisfactory as possible on particular common lands, but may represent a fair and balanced apportionment of common land as a whole in relation to national needs and to other land available for similar purposes.

Clearly the problem of finance is fundamental and it will not be satisfactory to allow the management of each common to be dependent on the financial resources for that common or that locality. Some kind of spreading of benefits and burdens will be called for. Another administratively important requirement is that in future it should be possible readily to identify and make contact with every individual who holds a common right. Many existing problems arise from the fact that the commoners are often untraceable and it may even be impossible to ascertain whether any persons entitled to common rights exist.

25. MACHINERY FOR THE USE AND MANAGEMENT OF COMMON LANDS

It is assumed that the Royal Commission will, before concluding their work, seek to indicate possible lines for new legislation enabling the use and management of common land to be brought into line with national needs, having due regard to the necessity for consulting and hearing all parties concerned and for protecting, where necessary by payment of compensation, the legitimate interests of owners of the soil and of commoners.

The Nature Conservancy recognise that much of what has been said generally above could have no effect in the absence of appropriate machinery for handling the problem in the future. Since Nature Conservation still tends to be regarded as the residuary legatee, the Nature Conservancy are vitally concerned that the best possible practical solution should be found.

The Nature Conservancy therefore offer with some diffidence the following suggestions with a view to possible inclusion in such recommendations:

1. Some agency or group of agencies should be charged with the survey of existing common lands in order to assess the land capability classification and potentialities, and existing and prospective users, past history and special characteristics.

2. On the basis of such survey some agency or agencies should be charged with preparing a draft management scheme providing for the modernisation or, where necessary, the extinguishing on due compensation, of existing commoners' rights and for the future land uses to be recognised and provided for in the management of the common. Such a scheme should include, where necessary, an ecological

plan and provision for by-laws, wardening, public control and provision of fences, gates, footpaths, regulation of burning, and control of rabbits and other pests, etc.

3. Provision should be made for local hearings on any scheme where there is disagreement between any of the interested parties and for the making of an award, against which there should be a right of appeal to some small national tribunal. It is important that this tribunal should not only be, but clearly appear to be, independent of any Minister having any interest in one or other uses of common land and that it should apply clear principles known in advance.

4. **Finance.** It is essential that adequate finance should be available for effective management of common lands brought under new schemes. One possibility would be to institute a national pool fund into which would be paid moneys received for concessions, such as grazing, tree planting and in some cases catering, other than payments due to owners and commoners. Such a fund could be used to support capital works and maintenance on commons having no economic revenue. Alternatively, the cost might be placed on Local Government; in that case it would be most undesirable that Parish or Rural District Councils should be responsible since their areas or rateable values would not allow a sufficient spread of the burden.

5. Each scheme should make full provision for an efficient managing body, either *ad hoc* or already existing for this or other purposes, and the management body should report at appropriate intervals to a central authority obliged to publish a regular summary of progress.

6. Provision should be made for research and for technical advice on problems underlying common land management.

7. Provision should be made for experimental and demonstration schemes by interested bodies, where necessary acting jointly.

8. Provision should be made for any necessary temporary or small scale enclosures for recreation, scientific, or other purposes.

9. Provision should be made for the Nature Conservancy to be consulted on all Sites of Special Scientific Interest and on other areas listed as important for nature conservation.

10. There should be provision for a register of commoners to be maintained, and failure to place a name on the register should, after a sufficient period, involve a lapse of common rights for the person and property in question. (*Cf.* Report of the New Forest Committee 1947, Cmd. 7245.)

26. SUMMARY AND RECOMMENDATIONS

Para. 1. Introduction: The functions of the Nature Conservancy and their interest in common lands as being the last reservoir for much of the native fauna and flora of the country.

Para. 2. Principle of Multipurpose Use: Explanation of the term and recommendations for dovetailing together a diversity of interests.

Para. 3. Principle of Maximum Use of the National Land Potential: The need to avoid overtaxing the land but at the same time to secure the fullest possible return in biological production or other land use depending on the characteristics of the land.

Para. 4. Scientific Characteristics of common lands and principles underlying the use of land.

Para. 5. Definitions: Ecology and description of vegetation types.

Para. 6. Land Capability Classification: Three grades based chiefly on the characteristics of the soil, indicating the limits within which use can be made of land of different types.

Ecological Types are described in paras. 7 to 15.

Para. 7. Woodlands and Scrub: A general statement on woodlands and their varying uses and the importance of encouraging growth of trees especially at high

altitudes. Reference is made to deterioration of woodlands which results from the lack of effective management.

Para. 8. Alpine Types: In England few practical problems of management arise on commons in this category but in Wales some control of grazing is required.

Para. 9. Bogs and Moorlands: Some of the most interesting types of habitat requiring special conservation. Hill farming and forestry interests would probably both benefit from some afforestation. Research is in progress on the role of peat in water conservation and also on the effects of moor burning.

Para. 10. Chalk Grasslands: The need to preserve representative examples of this type of land, much of which has been lost to various other uses, is stressed. Adequate grazing is the treatment recommended.

Para. 11. Limestone Grasslands and Limestone Pavements: The optimum treatment for this type of grassland is grazing, while for the barren pavement, tree planting is recommended.

Para. 12. Other Grasslands: This includes many different types, and research as to the most suitable use is being carried out by agricultural organisations. Soil deterioration is a serious problem.

Para. 13. Lowland Heaths: The conflicting demands and the dangers to which these heaths are exposed are examined and their importance to nature conservation is stressed.

Para. 14. Inland Waters, Fens and Marshes: The natural succession of encroaching vegetation raises problems in management policy.

Para. 15. Coastal Types: Owing to the many demands by other interests the conservation of remaining good examples of these types is important.

Para. 16. General Scientific and Conservation Aspects of Common Lands: Common lands are important for observing ecological succession because they have avoided exploitation and as illustrations of the natural landscape. The need to work with instead of against nature, and the lack of scientific knowledge of land use principles are pointed out. The Conservancy's current research programme will provide answers to many of the problems and indicate future management.

Para. 17. Existing Common Lands Problems Affecting Nature Conservation and Research: Summary of problems of organisation which the Conservancy wish to bring to the attention of the Royal Commission.

Para. 18. Relation of Nature Conservation to Other Interests in Common Lands: Provisional statement of the number of commons of direct interest to the Conservancy and introduction to the succeeding four paragraphs.

Para. 19. Relation of Nature Conservation Interests to Agriculture: Statement of the Conservancy's policy (with adequate safeguards) regarding grazing, removal of scrub, control of pests, etc.

Para. 20. Relation of Nature Conservation Interests to Forestry: The Conservancy would be in favour of much wider use of commons for afforestation combined, in some places, with agriculture—where possible hardwood or native conifers should be used.

Para. 21. Relation of Nature Conservation to Building and other Non-Agricultural Development: The possible need for this type of development in exceptional circumstances is recognised but it is hoped that commons will be safeguarded to the utmost extent.

Para. 22. Recreation and Amenity: The needs of modern civilization have increased the use of commons for these purposes. It is hoped that, with education, this use can be reconciled with conservation.

Para. 23. Possible Patterns of Multipurpose Use: No common should be a no-man's-land. Scientific advice is often necessary to prevent deterioration.

Para. 24. Formulation of a National Policy: There is a need for a clearly stated national policy taking into account all the interests concerned in individual commons and the uses of other commons in the particular neighbourhood, and

providing for multipurpose use where possible and the payment of compensation where injury results from new management. Finance should be treated on a broad, probably national, basis, and up-to-date records should be kept of holders of common rights.

Para. 25. **Machinery for the Use and Management of Common Lands:** The Nature Conservancy offer suggestions that legislation should be based on: (1) thorough survey of existing common lands; (2) the preparation of draft management schemes; (3) provision for local hearings, with a right of appeal to a national tribunal; and (4) for meeting the cost; (5) for an efficient managing body; (6) for research and technical advice; (7) for experimental and demonstration schemes; (8) for any necessary enclosures; (9) for the Nature Conservancy to be consulted on all scheduled areas; and (10) for a register of commoners.

Annexes

ANNEX A. CRANHAM COMMON, NEAR PAINSWICK, GLOUCESTERSHIRE

An area of grassland and woodland where common rights are still exercised on a fairly large scale.

Extent

The Common consists of about 600 acres of which about 450 are in the parish of Cranham and 150 in the parish of Brimsfield. The Common includes Buckholt Wood, Cranham Wood, Buckle Wood, Saltridge Common Wood, and Cranham Common as marked on O.S. maps. The Commons surround the village.

Nature of Common Rights

Cranham is a Common without stint. The most important rights are those of pasture and of estover (principally of Fire-hote), but the other rights mentioned above are also claimed as are those of hunting and shooting. The rights are held by all those who live on land which either belongs to the Manor or did so once, in fact, to practically the whole village of Cranham. The Common is much used by the villagers and by visitors from Gloucester, etc., for amenity.

Description of the Common

All but 100 acres consist of deciduous woodland of which beech is either the dominant or an abundant tree. In many parts it regenerates well. The woods are selectively felled in small patches by the Lord of the Manor—hence all age groups are represented, but very old trees are rare. No planting occurs as it is forbidden by the manorial rights.

The remaining 100 acres consist of typical Oolite pasture with much *Bromus erectus*, *Brachypodium pinnatum*, *Leontodon hispidus*, etc. Scrub is forming on the edges of the woods.

The Effect of Common rights on the Area

To-day 20 cattle are put to graze on the Common. They belong to only one farmer. In the past many more were put to graze. The decline is mainly due to the increase of fatted herds in the neighbourhood. These cannot be put on the Common for fear of contamination with tubercular heasts. Some commoners keep goats on the Common, many keep geese, ducks or chickens.

Hay is not usually cut. The woods are now little used for grazing (pannage, etc.) but in the neighbourhood of the village are effectively scoured for fire wood. Limbs can be lopped for house-hote and for mending farm implements, etc., but this is practically never done nowadays.

To summarise—the grassland of the Common is grazed insufficiently to prevent its eventual return to scrub. The exercise of common rights in the wood means that:

1. In parts very little dead wood is left on the ground.

2. In the past lopping disfigured the trees but made interesting microhabitats and bird nesting sites.
3. The woods are much walked in.
4. There is practically no game in the woods.

Recommendations

Cranham Common is outstanding on grounds of amenity, and of scientific interest, but common rights are still exercised on a large scale. The attractiveness and scientific interest is largely due to the area being commonland. Therefore, it is recommended that the common rights should not be disturbed.

From the scientific point of view (i.e. the Conservancy's) it is important that the restriction on planting be maintained. But it is also important that more cattle (or sheep) be put to graze on the Common. This could be achieved by insisting that only attested cattle were allowed on the Common and non-attested cattle were forbidden. If cattle were increased it might prove necessary to fence the woodland from the grassland.

If these measures were taken:

1. Good beech timber would be produced in the woods.
2. The grassland could support many more cattle.
3. The amenities would not be diminished.
4. The scientific interest would be maintained.

ANNEX B: INGLEBOROUGH FELL, YORKSHIRE

Ingleborough Fell is the name given to 1,808 acres of common land on the south side of Ingleborough. It includes all the land above 1,000 feet at the northern end of the parish of Clapham-cum-Newby except Clapham Bottoms and Clapdale Scars (see 2½ in. sheet 34/77). In addition to Ingleborough Fell there are three other commons on the Ingleborough massif (notified as a Site of Special Scientific Interest) together covering an area of over 6,000 acres, but since all present similar problems, only Ingleborough Fell is treated in detail. Information kindly supplied by the Lord of the Manor, Dr. J. A. Farrer, has been used in the preparation of this account.

Nature of the Land

Slightly less than half lies above 1,500 feet. This consists mostly of the Yoredale beds (shales, sandstones and limestone) topped with a small amount of Millstone Grit at the summit (2,300 feet). Underlying the Yoredale beds is Carboniferous Limestone which outcrops in a small area around Grey Scars. Elsewhere it is overlain by glacial drift. The upper limit of enclosed land above Newby is approximately 1,000 feet.

At lower levels on drift-covered limestone the vegetation is a mosaic of *Nardus stricta* (Mat grass) communities on the better drained ground and *Eriophorum vaginatum* (Cotton grass) bog in the damper hollows. Where limestone is exposed, a thin soil carries a species-rich limestone grassland in which *Festuca ovina* (Sheep's fescue) is abundant. On the steep slopes up to the summit *Nardus stricta* is again dominant, while the exposed summit ridge bears a dwarf shrub community of *Vaccinium* species, and *Empetrum nigrum* (Crowberry) with *Eriophorum vaginatum*.

Conservation Value

The whole of the Ingleborough massif is of great geological and biological interest. Its geological value lies in the configuration of the mountain which reflects clearly the characteristics of the different Carboniferous rocks. The limestone scars and pavements are particularly noteworthy. Each formation has its characteristic flora with the addition at higher altitudes of arctic-alpine plants, relics of early post-glacial times. Knowledge of the fauna is limited but interesting records of birds and insects have been made.

The suggestions for management made below would undoubtedly bring changes. The encouragement of woodland would lead to greater ecological diversity. Neither the alpine flora nor the geological features would suffer. Other plant communities of special interest are amply represented elsewhere.

Present Land Use

The 14 commoners with grazing rights are entitled to keep on the Fell as many sheep as they can over-winter on their farms—i.e. it is *un stinted* pasture. Every year the commoners hold a meeting to decide how many sheep each person is entitled to graze. A shepherd is appointed to look after the sheep and no commoner is allowed to go on the land or to move sheep without the shepherd.

At present there are 1,750 sheep on the Fell from March until November or December. It is undoubtedly overstocked. The resulting high grazing pressure is thought to account for the decline in heather which has been very largely replaced by coarse herbage (e.g. *Nardus stricta* and *Juncus squarrosus*), virtually useless as sheep fodder. Thus, although the theoretical rate of stocking is one sheep to the acre, the actual rate varies according to the quality of the pasture and is much higher on the better grazing.

A decline in the hags of grouse tends to confirm a decrease in heather cover. The following table gives a selection of the available data :

Year						No. of brace of grouse shot
1909	...	...	...	...	...	295
1919	...	...	...	...	...	215
1929	...	...	...	...	...	107
1939	...	...	...	...	...	7
1943	...	...	...	...	...	12

Although a few grouse remain, it is no longer worth while to shoot on the Fell. Since the sheep subsidy was introduced in 1939 there has been a distinct correlation between the number of sheep on the Fell and the amount of the sheep subsidy: when the subsidy is high, more sheep are put on the Fell than when it is low.

The rights of common grazing go with certain farms. The Commoner has to conform to the few regulations which he accepts in return for free grazing of his flock for eight or nine months of the year. He is under no obligation to improve the land, and, in fact, this procedure is unknown. The result is a gradual impoverishment of the soil and a deterioration of the pasture.

Potential Land Use

It has already been clearly stated that Ingleborough Fell has been overgrazed. It is equally clear that under the present system of land use the pasture would continue to decline in value. To reverse this process of degradation it would be necessary to change either the use or the management of the area. Under the first alternative, forestry is the only other possible land use. The area is believed to have once been covered (all except the summit ridge) with natural woodland and this is probably the most productive way of using the land over a long period. On the other hand, if the area continues in agricultural use, a greater variety of and control over grazing as outlined below would be advantageous.

Although in theory the most efficient land use is forestry, in practice it is not desirable that all suitable land should be planted, if it is correct to assume that food production is as important economically as afforestation. In these circumstances a combination of forestry and agriculture would seem to provide the ideal answer.

The Role of Forestry and Agriculture on Ingleborough

Aims of Management. To minimise soil erosion, exposure to wind and impoverishment of pasture by applying treatment appropriate to the two types of ground, i.e. limestone pavement and moorland.

Limestone Pavement. This is fissured Carboniferous Limestone devoid of a soil cover. It outcrops in patches all the way round Ingleborough at an altitude of

1,100 feet in the north and 1,200–1,400 feet in the south. Already covering hundreds of acres, its area is increasing yearly as soil is washed down the crevices or blown away after the loosening action of frost. In its present state it is useless as grazing and a danger to stock. Although the Forestry Commission are planting experimental plots on similar terrain, it would not be a practical proposition to afforest large areas of limestone pavement immediately, firstly because of the exposed position and high altitude, and secondly because our knowledge of the behaviour of trees under these conditions is incomplete. It is therefore suggested that three experimental areas of, say, 50 acres should be fenced against sheep, the first to be left entirely alone, the second to be hand-sown with seeds of native shrubs, and the last to be planted with suitable trees. After 20–50 years' observation enough experience should have been gained to treat the remaining limestone pavement with confidence, the aim being to establish the types of tree or shrub which would restore a soil cover as quickly as possible. It is not intended that the first crops would give an economic return, but with each successive year under forest the soil should increase in quantity and quality and yield better timber. Even if economic forestry fails, any kind of plant cover is better than bare rock; besides conserving the soil it will at least increase the natural history interest and amenity of the area.

Moorland. Because of the extent of this type of land in upland Britain any improvement in its productivity, however small, would be an appreciable gain. It is believed that substantial areas would benefit from afforestation with little or no loss to the farmer. Properly sited shelter and suitable grazing management would increase the value of the remaining pasture and so compensate for loss in area.

Experiments planned by Dr. J. D. Ovington of the Nature Conservancy in co-operation with the Forestry Commission are already in progress to determine the productivity of this type of land under forest and sheep grazing, respectively. The experimental area is approximately seven miles south of Ingleborough at an elevation of 875 feet above sea level. After only one year it is too early to reach any conclusion, but in three or four years' time some interesting data should be available.

These experiments will provide primary data on the relative effects of normal forestry and agricultural practices. There is, however, a need for experiments over a larger area where a system of combined forestry and agriculture can be compared with normal farming practice from the point of view of both economics and soil conservation. In planning an experimental area the following lines of enquiry should be pursued.

1. Enclosures below 1,250 feet. Some of the common land below 1,250 feet could be enclosed and cultivated more intensively.
2. Treatment of rough pasture. The Hill Farming Research Organisation has experience of improving this type of pasture and could doubtless advise on the best method of restoring soil fertility.
3. Variety of grazing. Because sheep are selective in their grazing, a prolonged sheep-farming régime leads inevitably to a reduction in the proportion of palatable to unpalatable pasture. Cattle on the other hand are more catholic in their tastes and their presence on the fells would therefore help to check this deterioration. At present it appears unlikely that any breed of cattle (except perhaps Highland cattle which have never been tried on this area) could be maintained successfully from the economic point of view on high and exposed ground. Where limited areas of hill land have been impoverished the frequent movement of stock, particularly cattle on to the rough unimproved pasture, can have a substantial beneficial effect on the poorer grazings.
4. Controlled grazing. In large expanses of open country stock are free to wander and graze at will. This may result in serious over-grazing of the most palatable pasture. It would prove beneficial if a system of controlled grazing was introduced, as has been shown to advantage on lowland pastures, both in this country and abroad.

Forestry. (i) *Economic*: Forestry is least productive at higher altitudes and therefore should not be confined to land at present unenclosed. Plantations should

be sited so as to give greatest protection to ground suitable for intensive agriculture. Wherever possible steep slopes should be planted to check soil erosion. In many cases it will be impossible to grow marketable timber at first: in the most exposed sites where there is little soil a period under native shrubs may be necessary before planting is attempted. Experimental areas should be planted before any large-scale afforestation is attempted.

(ii) *Shelter*: Because the southern face of Ingleborough is exposed to the full force of the prevailing winds little improvement to the agricultural value of the land will be gained without shelter. Some protection will be afforded from the afforested belts but specially sited shelterbelts and copses should form an essential part of the plan. The science of constructing efficient shelterbelts is still in an experimental stage in this country. Ingleborough is an ideal site for further research.

No attempt has been made to go into the economics of this plan. It is certain that capital will have to be put into the land for little or no return during the initial period. If a pilot scheme such as this were to succeed then the economic advantages to the nation would be substantial. Besides expanding production, biological capital in the soil would be increasing under the more varied land use. A greater variety of raw material would bring more security to the farmers and a more varied economy for the rural communities which might help to check the drift of people to the towns.

It should be emphasised that the plan envisaged above, if carried to its logical conclusion, would mean the reorganisation, not only of common land usage but also of whole farms. After centuries of traditional farming it would be extremely difficult to make such a change but looking at upland Britain it is equally hard to escape the conclusion that such reforms are long overdue.

It may be asked why such a scheme should be proposed by the Nature Conservancy. The main reason is that the Conservancy frequently find themselves involved in conflicts about land use on such areas which are not due to any fundamental incompatibility between nature conservation, forestry and agriculture, but arise from the attempt to apply particular agricultural and silvicultural treatments which in the Conservancy's view are inappropriate to the long term requirements imposed by topography, soil and climate. If new methods could be developed on some such lines they would enable the Nature Conservancy to give full support to a programme of rehabilitation of upland areas of this type, and to combine nature conservation with economic improvement. The Nature Conservancy's research programme is designed to throw further light on these matters, and it is hoped that much more knowledge will be available about them within a few years.

ANNEX C: THE COMMON OF THE MANOR OF ABER, CAERNARVONSHIRE

The greater part of the common lies between 1,200 and 3,000 feet. It is an area of rough grassland (*Nardetum* with much *Vaccinium myrtillus* and *Empetrum nigrum*); locally some heather, blanket peat (*Eriophorum vaginatum*, *Nardus stricta* and *Juncus squarrosus*), and summit vegetation; and locally at lower altitudes there is some dwarf gorse (*Ulex gallii*), bracken and scrub.

Extent

The acreage is 4,500 and the common includes:

1. **The North Eastern Flanks of Moel Unio** (1,903 feet O.D.) (north-west section) to the Afon Goch; and the cliff area of the Aber Falls (Rhaeadr Fawr).
2. **Above the Aber Falls** (southern and south-western section), the broad high level valley of the Afon Goch extending to the summit of Llywdmor Bach (2,257 feet), Llywdmor Mawr (2,750 feet), Foel Fras (3,092 feet), Bera Bach (2,550 feet), Bera Mawr (2,588 feet) and Yr Aryg (2,876 feet).
3. **The Northern Section**, which extends from the line of eminences of Llywdmor Bach and Mawr and Foel Fras to the Afon Anafon and to the summit of Y Drum (Carnedd Pen y Dorth Goch, 2,495 feet).

The Common Rights

Common rights are for grazing only, though turf or peat cutting may have been included in earlier times (records of Court Leet, 1765-1820).

During the period 1765-1820 there was a Court Leet and Court Baron. It was obligatory for each tenant (the number was variable, but it might be as much as 80) to attend the Court every year. Non-attendance was penalised by fines of 2d., 3d., 6d., and 1s. 0d. There was little absenteeism.

Perambulation of the boundaries took place annually and continued up to recent times.

The number of sheep that each commoner was allowed to graze on the common was 2½ for every pound of rent paid for the lowland farm. (Ten sheep were taken as being equivalent to one head of any other stock, including ponies.) In recent years the basis has been altered to three sheep on the common to one acre of lowland occupied by the commoner; 2s. 0d. per head was charged for any sheep over this number.

Present-day Usage of the Common

Only sheep and ponies are kept. The exact number of ponies is not known, but the number in the past was probably greater than at present. It is unlikely that cattle were present in any number in the past owing to the nature of the land. Cattle grazing may have occurred marginal to the Afon Anafon or about the lower edges of the cliff of Rhaeadr Fawr. Ministry accounts from the Public Record Office for the thirteenth and fourteenth centuries refer to summer cattle grazing grounds on the upland of the township of Aber. These may have overlapped with the present common, but their exact location is not known.

In the following table are set out the total area of the common, the maximum number of sheep each commoner is allowed to graze and the actual number of sheep grazing in 1952, 1945 and 1939. Accurate figures for years subsequent to 1952 are not available.

TOTAL AREA—4,500 ACRES

<i>Commoners' farm</i>	<i>No. of sheep allowed by right of Common</i>	<i>No. in 1952</i>	<i>No. in 1945</i>	<i>No. in 1939</i>
College Farm (U.C.N.W.) ...	865	700	730	800
Wig	500	340	298	232
Glyn	365	266	337	351
Cremlyn	350	200	200	197
Henfaes	350	231	235	130
Pen y Bryn	200	200	145	65
Cydcod	20	30	35	30
Bron Nant	150	150	190	184
Bont Newydd	85	60	50	54
Tre morfa	100	100	70	66
Tyn y mynydd	110	61	49	—
Henffordd	60	88	63	50
Ddol Cottage	65	60	70	65
Aber Hotel	80	79	70	—
Tan-y-Graig	60	—	—	50
Mwyd	110	—	—	86
TOTAL ...	3,470	2,565	2,542	2,360
Mean grazing pressure—				
sheep per acre	0·77	0·56	0·57	0·52
Trespass from Llanlechid ...	—	400	274	340
Trespass from Llanfairfechan	—	240	270	240
Gross grazing pressure—				
sheep per acre	0·77	0·71	0·69	0·65

From this table the following conclusions emerge:

1. At least since 1939 the common has not been grazed to the intensity allowed by common rights.
2. This suggests a policy of reducing grazing pressure to a level which appears most economic in terms of the growth rate of the stock on the hill during the grazing season. Sheep trespass from neighbouring commons may be a contributory factor.
3. The reduced grazing pressure may be due to the development by the University College Farm, and other farmers, of a larger 'improved' strain of Welsh sheep.
4. The grazing pressure is considerably less than that over other sheep grazings such as Cader Idris (more than one sheep to the acre), Snowdon (1½ sheep to the acre), Conway Valley (varies according to quality of the land from one to about three sheep to the acre). The adjacent Llanllechid common (which includes the summits of Carnedd Dafydd and Llywelyn) immediately to the south of Aber bears a grazing pressure of 2.43 sheep to the acre. (Llanllechid common is 7,000 acres with 17,000 sheep and 60 to 80 ponies.) The latter figure is very high, even when the better quality of the Llanllechid sheep walk is taken into account. (The superior quality of the Llanllechid grazing is probably due to the greater prevalence of basic igneous rocks within it.) The owner of the commons is the National Trust (previously the Penrhyn Estate).

The traditional Manor Court at Aber is now in abeyance but the commoners have formed themselves into a committee. At Llanllechid they are governed by the Parish Council, each parish house-holder having a right to pasture sheep on the mountain apparently without limitation as to number.

In the past a manor shepherd was employed, at Aber, but this arrangement no longer continues.

Ecology of the Common and its Scientific Interest

The common is of ecological interest in that it comprises a wide and representative range of typical and highly interesting habitats and plant communities characteristic of high altitude mountain massifs in South Britain. The Nature Conservancy do not consider that moderate grazing over the area is inimical to the scientific interest, but any substantial increase in the sheep population will lead to degradation of soil and vegetation, which ultimately will be disadvantageous both to livestock productivity and to the scientific interest of the common. The prevailing high rainfall and low base reserves of the igneous rocks which form the main soil parent material of the common, probably makes the area one of the most sensitive in the whole of Snowdonia to the adverse effects of excessive grazing.

Geology

The geology of the area is Ordovician. The greater part is composed of an acidic to intermediate igneous rock extending from Foel Fras to the Rhacadr Fawr. To the west in the area of the Bera group more basic dolerites occur and to the east the Dnosgl and Drum are rhyolitic. On the north-eastern slopes of Moel Wnion sediments including grits prevail. The terrain of the common is heavily glaciated; the drifts are of local origin, and in lithological composition they closely reflect the solid geology.

Climate

It is estimated that the mean annual rainfall ranges from 60 to over 100 inches. Agriculturists consider that this is the mildest part of the Snowdonian region on account of its proximity to the sea. The development of the larger sized improved Welsh sheep in this area may be a consequence of this.

Soils and Vegetation

The range of soils and vegetation can be summarised very briefly in a highly generalised manner as follows:

1. **Brown Earth Soils** bearing bracken, *Ulex gallii* and *Agrostis-Festuca* vegetation are limited to the north-eastern slopes of Moel Wnion about the base of Rhaeadr Fawr and occupy a narrow margin along the Afon Anafon almost up to Llyn Anafon.

2. **Shallow Peaty Podsoils or Gley Podsoils** (organic horizon 6 in. to 1 foot). The vegetation is essentially a *Pardetum* with much *Vaccinium myrtillus* (*V. vitis-idaea* with increasing altitude), *Juncus squarrosus* and *Empetrum nigrum* (*Calluna vulgaris* is rather local). This kind of soil and vegetation is very extensive, and constitutes the greater part of the sheep walk.

Intermediate kinds of soil and vegetation between the *Agrostis-Festuca* type and the *Nardetum* occur locally at high altitudes in both the valleys of the Afon Goch and Afon Anafon.

3. **Blanket Bogs**—The peat is usually about 4 feet in depth overlying a gley podsol profile. The vegetation ranges from *Eriophorum vaginatum* to *Juncus squarrosus* and *Nardus stricta*. Erosion of the peat margin is general, though not on a catastrophic scale.

4. **Shallow Summit Skeletal Soils**—There is little differentiation of the soil profile, amorphous organic material passing directly to shattered rock. There are two main kinds of plant communities:

- (i) *Festuca-Agrostis-Rhaconitrium lanuginosum* on summit detritus.
- (ii) *Festuca-Agrostis-Vaccinium-Empetrum*, on gentle slopes immediately below the summit detritus.

Comparison with other Snowdonian Sheep Walks

The quality of the grazing is very poor when compared with other parts of Snowdonia. There is, elsewhere, a greater proportion of the *Agrostis-Festuca* (often accompanied by herbs of lowland pasture) element, which is wide-spread up to 1,800 feet and local areas occur at much higher altitudes. This contrast in vegetation can be accounted for by differences in geology. Elsewhere, the more basic kinds of igneous rocks, such as dolerite, and calcareous ashes are more widespread. The igneous intrusion of the Foel Fras area, which is the principal soil parent rock of the common, is only slightly more basic than the acidic rhyolites which give rise to the poorest soils and vegetation in Snowdonia. The low sheep grazing intensity over the Aber sheep walk is undoubtedly determined by geology.

The Capabilities of the Land

1. The extent of land which is improvable, either for grazing purposes or afforestation, is very small and is almost entirely confined to the limited areas of brown earth soils. Such areas on the north-eastern slopes of Moel Wnion and about the bases of Rhaeadr Fawr and Fach could be enclosed and added to existing fridd land. Within much of the existing enclosed fridd excellent work has been done by the University College Farm to control the bracken, by various means such as cutting, ploughing and reseedling.

The brown earth soils on the margin of the Afon Anafon are too limited in extent for economic exploitation. Improvement would depend on the development of aerial distribution of fertilisers. Afforestation for shelter purposes could be envisaged.

The Moel Wnion—Rhaeadr Fawr—Brown earth soils would come within Class B or the lower levels of Class A in the land capability classification.

The Afon Anafon—Brown earth soils would all be within Class B.

2. The remainder of the common would be classed within the lower ranges of Class B, that is, rough grazing of low productivity, unsuited to economic afforestation or any form of agricultural reclamation, though the aerial distribution of fertilisers in the future might be a means of maintaining the fertility status of the

soils now constantly depleted by the removal of animal products. It is not considered that such a development would be severely detrimental to the scientific interest of the area since the present status of habitat and vegetation is influenced by human usage over several centuries. An exception should be made of the shallow summit skeletal soils (see type 4 under Soils and Vegetation). On scientific grounds, these should be retained in their present state.

The Main Requirements and Recommendations are :

1. That grazing intensity should be equivalent to about 0.5 ewe units per acre. This should ensure the conservation of pastoral production and of scientific interest, by limiting the degradation of vegetation and soil fertility and erosion of unstable soils.

2. Ideally this would be achieved by enclosure. The Conway Valley sheep walks have the great advantage that they are enclosed up to over 3,000 feet on the Foel Fras (enclosure awards of the mid and late nineteenth century), so that stock number is more closely attuned to the productivity of the herbage, but due to geological differences the Conway Valley sheep walks carry at least twice the number of sheep. The establishment of enclosures and their maintenance has, therefore, been more rewarding than on the Aber sheep walk. Under present conditions any enclosure of the high level grazings at Aber would not be economic.

3. **Ways and Means**—As a first step the Manor Court or Leet, or its equivalent, should be re-established. Since the University College Farm holds grazing rights on the common, scientific advice on agricultural matters would be readily available to such a committee or body. It is suggested that in view of the Nature Conservancy's close connection with the College at Bangor the views of the Nature Conservancy could be made known from time to time, either through the College Farm's representative or by means of Nature Conservancy representation, on the Committee of Commoners.

4. The problem of the Aber sheep walks cannot be considered in isolation. It is one of a string of commons on the seaward side of the Carneddau Range extending from Conway Mountain in the north-east to the Nant Ffrancon in the south-west. The sheep walks are not fenced from each other, so that the management régimes of adjacent sheep walks affect each other. This is particularly so in the case of the Aber and Llanllechid common.

It is therefore proposed that a Commoners' Association should be formed for the whole of this coastal group of commons. This association would be responsible for an integrated and rational land use or management policy for the whole region. Such an association could provide owners and commoners with the advice of agricultural scientists, foresters and the Nature Conservancy, on critical problems of land use.

The association would consider such aspects of land use management policy as:

- (i) Stock breeding policy.
- (ii) Control of disease.
- (iii) Land improvement by reclamation, or other means, such as control of grazing intensity and its seasonality; the distribution of fertilisers by large scale means (e.g. by air).
- (iv) Major changes in land use, such as enclosure of land where advantageous, and the institution of a controlled system of grazing, which is an integral and essential feature of superior grassland management.
- (v) Afforestation—
 - (a) on a commercial scale at lower altitudes (no substantial opportunities exist within the Aber common but there are probably greater possibilities elsewhere).
 - (b) to provide shelter at high altitudes—in addition to suitable conifers, birch would be an important species.

- (vi) Regulation of stock numbers and, as far as practicable, the ratio between different types of stock, with particular reference to sheep, cattle, and ponies, having regard to:
- (a) conservation of vegetation, soil fertility and scientific interest,
 - (b) variation in sheep walk ecology, and
 - (c) economic requirements.
- (vii) The association would be asked to consider the importance of the region to scientific research and provide field facilities for research, both in the economic and fundamental fields. It is of relevance that the Nature Conservancy's headquarters in Wales, at Bangor, will deal in its research programme with fundamental investigations in Snowdonia on the influence of local climate and geology, upon soil and vegetation and its productivity. The results which have already accrued can be of future importance in giving guidance on more rational land use, particularly grazing policy. This work throws light on some of the important ecological factors which determine sheep walk productivity and the stability of their soils.
- (viii) The problems dealt with would involve consideration of multi-purpose land use. Conflicting interests would not be considerable owing to the limitations imposed by the environment.

The Aber and Llanllechid Commons could be organised as a special group, since they are under one ownership and are closely inter-related. It is hoped that present grazing practices can be rationalised and the development of management policies, as outlined above, will be given urgent consideration. For instance, the present grazing pressure of 2½ sheep to the acre over the latter sheep walk should be reduced to about 1½. The common grazing rights should be confined to the farmers of the parish and not extended to every householder, as at present. This is important not only to the maintenance of the economic productivity of both commons, but also to the conservation of soils and vegetation of scientific interest.

ANNEX D(I): BUXTON HEATH, NORFOLK

This common covers 159 acres of wet and dry heath and valley bog situated in a basin of glacial sands and was allotted in 1801 for the poor of the parish of Hevingham. It is managed by Trustees appointed by the Parish Council.

The ecological value of this common lies in its variety of seres and interdependent plant communities ranging from acid heath to slightly alkaline fen and is unique amongst East Anglian heaths. Its flora has been studied in detail by several amateurs and professional biologists and it has been the site of much research in plant ecology (e.g. *Trans. Brit. Mycol. Soc.* 1936; *Trans. Brit. Bryol. Soc.* 1953; *J. Ecol.* 1946; *Proc. Linn. Soc.* 1953; B.S.B.I. survey 1954).

Three activities are carried out today which are very harmful to the vegetation: (1) Deliberate burning, possibly as an attempt to improve the very little grazing which takes place; (2) Deposition of lorry or cart loads of rubbish and scrap iron; (3) The collection of sphagnum moss. The heath is the only source of this moss for some miles, but its collection is resulting in parts of the bog drying out and the nature of the vegetation is changing.

The Conservancy have been successful in arranging with the Eastern Command not to use the common for training purposes.

ANNEX D(II): QUY POOR'S FEN, CAMBRIDGESHIRE

This site covers an area of 70.73 acres and is an inter-common between the parishes of Quy, Fen Ditton and Horningsea. The inhabitants of these three parishes have a right of access and of cutting wood. Until recent years the common

consisted of rough grass and scrub and was valued locally as an amenity for the three parishes.

Scientifically, Quy Fen was of considerable interest to the biologist as one of the very few surviving relics of rough-grazed 'fen margin' land in Cambridgeshire and its biological value was enhanced by several abandoned coprolite pits now full of water. The plant communities represented included:

1. Calcareous grassland and scrub with *Linum catharticum*, *Ophrys apifera*, *Primula veris*, etc., passing over into:

2. Rough grazed fen with several relic fen species including *Eriophorum angustifolium*, *Viola canina*, *Anagallis tenella*, *Carex pulicaris*, *Sieglingia decumbens*.

3. Aquatic and marginal communities round coprolite pits.

In addition, there is a moss recorded from the common which was abundant in the fens 150 years ago and, until recently, was thought not to have survived the final drainage of the fens a century ago.

In 1940 the War Agricultural Executive Committee asked the Quy Parish Council to arrange for the Poor's Fen to be let for grazing for the duration of the war. A board of Trustees was formed, comprising two members of each of the three councils concerned. The grazing was let on condition that the villagers of all three parishes should retain their rights of access and of cutting wood and that no dangerous animals should be grazed.

In 1953 the grazing tenant obtained permission from the Trustees to plough up the greater part of the common. This gave rise to much local protest, and by a large majority at a special Parish meeting, it was agreed that the ploughed-up acres should be rescinded. Unfortunately, only an estimated five acres around the coprolite pits have survived the ploughing-up.

ANNEX E: PORT MEADOW, PIXEY, OXEY AND YARNTON MEADS, OXFORDSHIRE

These alluvial meadows bordering the Thames above Oxford, have been common land since the Norman Conquest or earlier. Port Meadow (c. 40 acres) is owned by the freemen of Oxford and administered by the City Council; it is mentioned in Domesday Book 1085: 'All Burgesses of Oxford have in common without the wall a pasture'. The meadow has been used solely for grazing by cattle, horses and geese (not sheep), with one exception—in the Civil War the meadow was ordered to be mown for use of the King's cavalry occupying Oxford. In the first World War, the north end was used as an aerodrome and for a short period in the last war as a camp; there is now a football field and some allotments, but the main part of the meadow is in no apparent danger of exploitation.

In June, 1955, the City Council decided to spray an area of 80 acres with the selective weedkiller 2,4-D in an attempt to eliminate the ragwort and thistles. However, after protests from the Conservancy and the Ministry of Agriculture, Fisheries and Food, they reconsidered their decision and arranged to cut and burn the weeds.

Pixey, Oxeey and Yarnton Meads (270 acres) are common land to the villages of Begbroke and Yarnton. In contrast to Port Meadow, this area has been cut for hay every year and grazed only from early autumn to mid-March. Oxeey Mead was ploughed in the last war and is still arable, but the other two meadows have undergone the same treatment for several centuries, and probably since Domesday.

All these meadows are liable to flooding which is important in the maintenance of the moisture-demanding vegetation and in the transport of alluvium which forms the soil. This is a fine silt and organic debris brought down from the catchment area on the Cotswolds at each inundation. The initial deposit is highly calcareous; there is a certain amount of leaching and the soil reaction is around neutrality with

higher alkalinity in the more waterlogged parts. The vegetation is rich in species typical of base-rich water meadows, although no particularly rare species have been recorded. The main botanical interest lies in the associations of species resulting from the maintenance of constant grazing treatment over nine centuries—a unique situation in this country. Thus, in Port Meadow there has been continuous all-year-round grazing and in Pixey and Yarnton Meads, winter grazing and annual removal of hay crop, the latter resulting in loss of fertility, while in the former there is continual return of manure throughout the year. This factor is largely responsible for the difference in the species lists of the two areas.

The area has been used extensively for teaching and research purposes. Recent research includes a comparative study of the ecology of buttercup species and studies on the influence of management on evolution of species. Stapledon collected from Port Meadow his parent material for the breeding of strains of improved pasture grasses, such as S.23 rye grass.

Port Meadow attracts many uncommon birds, especially on migration.

The meadows are obviously of great agricultural and conservation value, and should be maintained under the present management régime without deliberate interference with the habitat conditions. The addition of manures or application of chemical weedkillers should be avoided on this historic site.

References

H. Baker (1937), *J. Ecol.* Vol. 25.

A. G. Tansley (1939), *The British Islands and their Vegetation*.

ANNEX F: STATEMENT ON HEATHER BURNING

A meeting was held on 27th September, 1955, at the Edinburgh headquarters of the Nature Conservancy to discuss some aspects of moor burning at the present day.

Representatives of the following organisations were present:

- Forestry Commission.
- Scottish Landowners' Federation.
- Nature Conservancy.
- Hill Farm Research Organisation.
- National Farmers' Union.
- Department of Agriculture for Scotland.
- The Scottish Agricultural Colleges.

The meeting was agreed that hill land not involved in reafforestation is vital to the livestock industry of this country and must continue in its present use, managed in accordance with good hill farming practice. The Nature Conservancy, going further, maintained that the rotational burning of rough grazing which followed the deforestation of upland Britain had constituted a retrograde step in land utilisation; but the Department of Agriculture for Scotland and most of the other agricultural interests were unable to support this view. It was stated that investigations so far carried out on the effects of moor burning on soil fertility indicate that it is ultimately detrimental, leading at best to a gradual loss of mineral nutrients and at worst to more or less severe soil and peat erosion. The main question before the meeting was, therefore, how the less desirable effects of moor burning could be kept at a minimum. It was generally agreed that this could best be effected by a better control of heather burning and that there was room for improvement in the standard of the discipline and technique. The following works are still regarded as the best guides to responsible hill management:

- Lord Lovat (1911)—*Moor Management in The Grouse in Health and Disease* (Final Report of the Committee of Enquiry on Grouse Disease). London. Also (1912) in *The Grouse in Health and Disease* (Popular Edition) edited by A. S. Leslie and A. E. Shipley, London.

Wallace, R. (1917)—Heather and Moor Burning for Grouse and Sheep. Edinburgh.

Linton, A. (1918)—The Grazing of Hill Pastures. Selkirk.

The meeting wished the following points to be stressed particularly:

1. Extension of the period of muir-burn beyond 15th April is undesirable other than in exceptional circumstances.
2. Fires should not be allowed to run uphill beyond the limit of typical heather moor.
3. The hill should be burned in strips of moderate size in regular rotation. The burning of large areas is undesirable.
4. Burning should be kept to a minimum where bracken and deer hair sedge are obviously invading heather ground, for it can only favour the spread of these plants at the expense of the heather. The spread of 'deer hair' is a sign of serious reduction in soil fertility.
5. Each area of hill should be dealt with on its own merits according to the altitude, slope, aspect, rainfall and so on, rather than by general rule of thumb.
6. Wherever possible, and especially where the area of woodland is small, moor that is being colonised by abundant seedlings of birch, pine or other trees should be left unburned unless it is being regularly used for stock grazing. Woodland formed in this way can provide valuable shelter and encourage the early growth of vegetation in spring.
7. Where woodlands exist, all persons intending to undertake muir-burn should study the provisions of the Hill Farming Act of 1946, and be aware of their obligation under the act to give adequate warning of their intention.

It was agreed that the Nature Conservancy should convene a meeting of those engaged in ecological research touching any aspect of moor burning. Conclusions which may be of interest to owners and tenants of hill land should be published as soon as possible.

Examination of Witnesses

PROFESSOR W. H. PEARSELL, F.R.S., F.L.S., D.Sc., and Mr. E. M. NICHOLSON, C.B., on behalf of the Nature Conservancy

Called and Examined

1974. *Chairman*: May I, first, say how grateful we are to the Nature Conservancy for its very full memorandum, which touches on a great many of the problems with which we are concerned. I would like to ask a few questions about what the Nature Conservancy is and what its functions are. I have looked at Part III of the National Parks and Access to the Countryside Act, 1949, but that is mostly concerned with powers rather than duties. Everything therefore depends on how the Conservancy is interpreting the task which has been entrusted to it. I notice that in Section 25 of the Act, there is a reference to a Charter; is there something in the Charter which deals with the Conservancy's responsibilities? —*Mr. Nicholson*: Yes. The Charter states: 'It is expedient that a separate body should be constituted under the name of the Nature Conservancy, whose

functions it shall be to provide scientific advice on the conservation and control of the natural fauna and flora of Great Britain: to establish, maintain and manage nature reserves in Great Britain, including the maintenance of physical features of scientific interest; and to organize and develop the research and scientific services related thereto . . .'

1975. That does not go very much further than the Act, does it? Can you tell us, in general terms, what policy the Nature Conservancy is following? —*Yes*. The Nature Conservancy is primarily a scientific body, and, as such, is engaged in a very wide range of research into vegetation, fauna, and such matters as soils and their fertility status, the conservation of water and coastal erosion and accretion. That research is done in a number of research stations,

the principal one being at Grange-over-Sands, on Morecambe Bay, and has to be done largely in the field; therefore the nature reserves and other scientific sites form not merely areas which are to serve as living museums to preserve wild life but also as outdoor laboratories in which the scientists work. Rather more than one hundred research projects are in progress at this moment, some on nature reserves and some on other sites, including some on common land.

1976. I can understand what a nature reserve is. There are also however sites of special scientific interest; do you need them permanently?—Yes.

1977. Do you have to watch developments over a long period?—Yes. Originally in the National Parks Report it was suggested that there should be Conservation Areas, to include sites of special scientific interest, but those areas were so wide and varied it was considered impossible to set aside so much land. As an alternative the 1949 Act provided that the Conservancy should have the duty of notifying all local planning authorities of any land in their areas which by reason of its flora, fauna, or geological and physiographical features was of special scientific value, so that the local planning authority could take account of that fact in considering development proposals. Thus the Conservancy has no power over sites of special scientific interest, except in as much as the local planning authority must consult the Conservancy before they are developed. It is the policy of the Conservancy to compromise wherever necessary on fringe matters, but to try to preserve intact the sites of special scientific interest as well as the nature reserves.

1978. All of them?—Yes.

1979. Do you merely want types of natural development or possible development or do you want any place which may possibly be of scientific interest?—Not any place. The sites are very highly selective. A very large number of places, which are undoubtedly of scientific interest are refused that status, to the great distress of local naturalists. But the problem is that there are so many variations in soil, in history of previous land use and so on, that in this country one can choose only for the actual Reserves a very limited number of

types illustrating the variety of fauna and flora and the physiographical features which are necessary for scientific purposes. There are a very great many gradations and these sites of special scientific interest are all examples of the interplay of those basic factors.

1980. Are the areas quite small? I notice you say in Section 18 of your memorandum that there are 11 areas subject to common rights which are nature reserves, 16 areas which are proposed nature reserves, and roughly 200 sites known or believed to be subject to common rights notified to local planning authorities. Do they cover the whole area in each case, or do you just have a limited laboratory, so to speak, on a common?—The boundaries are drawn in each case after a scientific survey of the area which is of direct scientific interest. The only exception is that occasionally, in order to find boundaries traceable on the ground, one has to have a 'buffer' area round the site. But they are chosen on a strict survey and are areas which actually contain vegetation or animal life or physiographical features of really high scientific interest.

1981. You are giving us a list of these sites?—Yes. Our great difficulty is to find which of these areas on our list are commons in your sense. Some of them are called commons on the map, but in some cases we cannot find out whether they are to be regarded as active commons or not. That is the problem.

1982. *Professor Stamp*: I would like to get one or two principles clear. I believe that the genesis of the Nature Conservancy was the recommendation of the Scott Committee. I have before me the actual wording of the Scott Committee's recommendation: 'We recommend that the Central Planning Authority should, in conjunction with the Ministry of Agriculture, take steps to record details of common lands . . .', and then it goes on: ' . . . We recommend that the Central Planning Authority, in conjunction with the appropriate scientific societies, should prepare details of areas desired as nature reserves (including geological parks) and take the necessary steps for their reservation and control—which must be strict if rare species are to be safeguarded.' Is that, in general, the principle upon which you still work?—Yes, but I think we put much more accent now on the use of these areas for finding out how nature

works in matters such as trends in soil structure, water conservation, and so on. I think that is the only difference.

1983. In your evidence you refer to yourselves as a sort of residuary legatee. Is that correct? I should have thought that the heritage of this country could be likened to a basket of jewels and you have been asked to pick out the most important jewels scientifically and conserve them; is that not right?—Yes, that is perfectly correct—but we have been asked to do that when a very large number of 'housebreakers' have got away with many of the most valuable jewels before we started.

1984. That is admittedly the case, but do you not now have first choice of lands and sites for conservation for nature reserves and for scientific purposes?—*Professor Pearsall*: Not when they are common land. That is a very important point. Some of our proposed nature reserves could not be made into nature reserves because they were subject to common rights.

1985. Do you value commons because they are accidental preservations from the past which often contain rare plants, and so on?—Yes. Some of them.—*Mr. Nicholson*: Their preservation is partly accidental since a fen, for example is very difficult to drain, but their scientific value is partly due also to the fact that surviving fens form a very small part of the landscape and are inherently rich in species. It is not entirely an accident in many cases.

1986. I think Professor Pearsall has precisely the point I had in mind: that in order to carry out your work you require control in the management of the areas, do you not?—*Professor Pearsall*: Yes; that is the point I was going to make in response to the Chairman. As we have gone on, we have realised more and more that we are not only committed to nature preservation but also to large scale conservation of the characteristics of the countryside—not only scientific characteristics but the general physical and other characters as well—and so we are immediately brought face to face with the general problem of land use.

1987. *Chairman*: Why are you committed in this way?—If you want to preserve a piece of country, what people are doing around it immediately becomes important, for example your water supply

may be cut off from outside—or somebody may start a fire outside which starts your heather burning, so that you get soil erosion on your land. In other words, you cannot control any piece of country in Great Britain unless there is general control of the surroundings.

1988. *Professor Stamp*: Do you mean that while we have common land with lords of the manors with certain rights, and commoners, who may or may not be known, with other rights, the Nature Conservancy has no powers over the land, that it has no rights at all?—Unless we buy the land or persuade the commoners not to function, we have no powers at all. We can only advise the local planning authority.

1989. Would it be very much simpler if the common rights were eliminated and you were allowed control?—As far as we are concerned, yes. *Mr. Nicholson*: We do not seek an exclusive control. Our whole idea is that there are so many differing claims that there should be control, perhaps in the sense of a comprehensive plan taking account of nature conservation, among other things, which might be administered by some other body than ourselves.

1990. That is your 'multipurpose use'. But, turning to your memorandum, you go on to a different concept. When, in Section 3, you talk about the principle of maximum use of national land potential. Is not that exactly the thing which you have to fight? You are seeking to conserve for scientific purposes fauna and flora. The concept of maximum use of national land potential would mean classifying all your land into groups A, B and C according to its potential productivity. Maximum land potential is the right point of view perhaps if you are farmers, seeking to get the maximum out of the land, but is it a principle to which you want to work?—Yes, definitely, because we are looking at it from a very long term point of view. I think the clash would be between maximum use in terms of three or five years as against the maximum use of the potential in terms of hundreds of years. It is that second concept which we intend, and that second concept requires, for instance, an adequate amount of land to be devoted to research in order to find how we can work with, instead of against, nature. It also requires that one

should abstain from those methods of exploiting low grade land which will have to be reversed within a measurable period. So we do not think that, if you take a long enough view, there is a serious conflict.

1991. I would accept that if you were a scientific organisation responsible to the Ministry of Agriculture; but I should have thought that the consideration which should weigh with you is the concept of 'optimum use in the national interest', which was a favourite phrase of the Scott Committee. Their point of view was that if there is an area of particular scientific interest, its optimum use in the national interest is as a scientific laboratory, quite apart from the question of maximum output—which is another matter altogether. Would you agree with that?—Yes, we would. Our plea is for the consideration of all possible demands and not merely agricultural and forestry demands. There are so many demands, for education, science, gravel, military training, and so on, and we feel that all those have got to be weighed against one another—not merely the agricultural and forestry demands.

1992. Can you really believe then that the principle you set out in Section 3 is the one to which you should work?—*Professor Pearsall*: It is not quite right to put it in that way. If I may put it scientifically, most of the areas in which we are interested are what one would call 'tension zones', areas of no great productivity; that is to say, they tend to go downhill, scientifically as well as from the point of view of potential production for agriculture or forestry, and it is precisely that going downhill that we want to stop. It is our biggest problem.

1993. In the majority of cases, I can see that, but in your Annex D (II) you refer to a piece of very interesting fen land, Quy Fen in Cambridgeshire, and you indicate how interesting it was scientifically; but it was land which was potentially very valuable agriculturally and so, during and since the war, it has been ploughed up. You end by saying: 'Unfortunately, only an estimated five acres around the coprolite pits have survived the ploughing-up'. That is a case where you would have liked to have kept a piece of good land, just like Port Meadow, in Oxfordshire, in your Annex E, for scientific purposes. I would agree

with you that although both these are examples of really good land, their optimum use in the national interest lay in your conservation.—Quite possibly. I think you have to take every case individually. This is the danger of trying to generalise. But I should like to refer to another example, either Annex C or, better still, Annex B, Ingleborough Fell, Yorkshire. There is an area—a very considerable area—which represents some three square miles of country affecting at least five interests: the agricultural interest is at present just rough grazing; the lord of the manor's interest was originally sporting, and is now presumably forestry; the scientific interest is that there are a number of rare species and interesting groups of flora and fauna; there are amenity and rambling interests in the routes to the top of Ingleborough. They are all of considerable importance, and they are all deteriorating. Ingleborough is getting less and less interesting as a walk as time goes on. The amenity features are disappearing before one's eyes—the bits of woodland that made it so attractive in the first place; and the soil with its rare plants is being washed off as bad forms of land use have their effect. It is in that sort of sense that we become interested, whether we like it or not, in these very wide uses. They are all part of our problem.

1994. Would you agree that your first two categories—woodlands and arctic-alpine vegetation are climatic climaxes in this country?—Yes.

1995. And that the other types of vegetation in which you are interested are either sub-climaxes or soil (edaphic) climaxes?—No; there is a large area of bog and woodland, which was originally mostly woodland, and it degenerated only when the woodland was cleared. Scientifically it is a zone where the woodland should never have been cleared away.

1996. Do you require control over the management of that area so as to preserve scientifically the present conditions and study them?—No; I would like to see it scientifically upgraded.

1997. Does it again come back to the fact that management must be based on scientific knowledge to achieve that?—Yes; but our management would aim at regeneration. That is what we are involved in time and time again.

1998. But if the land is common, it is a question of what the lord of the manor and the commoners choose to do. You have no power have you?—None at all.

1999. I think that this discussion has brought out the point I wanted to bring out—that while land is subject to common rights it is preserving accidentally—I am going to stick to my word—many features of interest; but the vital control over those areas is missing.

2000. *Professor Alun Roberts*: I think we all wish to conserve certain areas and, where appropriate, regenerate them and so on, but is it not equally imperative that we should have regard for future generations and not mortgage the future just to fill the lacunae in our present knowledge? Should we not rather preserve some of our wild nature for the greater fount of knowledge that may emerge five, fifty or a hundred or any number of years hence?—*Mr. Nicholson*: We would agree with that. We would say that the national Nature Reserves should constitute a sufficient reservoir for that purpose, but outside them we attach importance to our advisory function—not control but advice—and we hope that the results of our researches and demonstrations will lead to the people responsible for the management of other areas injecting into their management the knowledge that comes out of our research, in the same way as farmers take advantage of the knowledge gained by the Agricultural Research Council. We do not want control of those areas, but we do hope that our knowledge will be used.

2001. Would you say that you have, within the big national Nature Reserves, enough land to keep inviolate for the distant future a core for fundamental development as knowledge advances?—Yes; when our programme is completed, I think we will.

2002. *Chairman*: Does your advisory function stem from the Charter?—Yes.

2003. There is nothing about it in the 1949 Act, is there?—No.

2004. That simply says to provide 'opportunities for the study of, and research into, matters relating to the fauna and flora of Great Britain and the physical conditions in which they live, and for the study of geological and

physiographical features of special interest in the area, or of preserving flora, fauna or geological or physiographical features of special interest in the area'.—Yes. Advice is a Charter function: 'To provide scientific advice on the conservation and control of the natural flora and fauna of Great Britain'. Our Charter under the Privy Council is very similar to that of the Agricultural and Medical Research Councils and it defines our functions: the Act which followed later gave additional powers.

2005. *Mr. Floyd*: Supposing your plans were completed, what proportion of England and Wales would constitute nature reserves, leaving out the sites of special scientific interest which are usually smaller? Would it be quite a small percentage of the land surface of England and Wales?—Yes. In national Nature Reserves, it is of the order of one part in five hundred.

2006. *Mr. Arnold-Baker*: Is it one five-hundredth of common land or of the total superficial area of the country?—Of the total superficial area of the country. In England and Wales the actual figure is just under 80,000 acres.

2007. *Mr. Floyd*: So it does not look as if it will ever be more than .2 per cent.?—*Professor Pearsall*: Less than that. I think it is possible that we shall not get all that we have on the list.

2008. *Mrs. Paton*: What co-operation do you get from people who have common rights over land when you approach them with a view to preserving that land in the interests of science?—*Mr. Nicholson*: I think the answer is that where we are successful in approaching them, we get good co-operation—but the difficulty is to find them!

2009. Could you tell us of any stretch of land that is really being lost to the country and to scientific knowledge because of this?—*Professor Pearsall*: Yes. When we wanted to acquire a large area of Pennine bog, the Stainmore Common area, we found that the commoners' rights on it were so vague and the body of commoners so ill-defined that it was not possible to consider constituting a nature reserve.

2010. It is therefore being lost to the country, from your point of view?—Yes, that one has been lost. On another

area of about 10,000 acres in the Northern Pennines which we have taken as a substitute there are a more limited number of commoners who can be defined, and we are going ahead with that, getting agreement as we go along with the known commoners. They are, on the whole, quite reasonable but, of course, naturally want to keep their grazing rights going.

2011. *Professor Stamp*: May I go back to the 80,000 acres, which you would like as nature reserves? I take it that you would definitely try to keep some of it as it is at the present time?

—*Mr. Nicholson*: Yes, the greater part of it.

2012. Other parts you would really experiment with?—Yes.

2013. I notice that in some of the examples in your memorandum you talk about the land potential and put certain areas in Category A, which sounds as if your intention is to improve them agriculturally; is that also the objective?—Not to improve them agriculturally.—*Professor Pearsall*: I doubt whether we have much land in Category A.

2014. I had in mind the land dealt with in Annex C, The Common of the Manor of Aber, a very large area in Caernarvonshire. In the section of the Annex entitled 'The Capabilities of the Land', you refer to the brown earth soils, and then you say: 'Brown earth soils would come within Class B or the lower levels of Class A in the land capability classification'; so that, if we turn back to the section on your land capability classification it suggests that you want to turn this into arable land. Is that a form of management which you would want?—*Mr. Nicholson*: No. Of course, this is not a proposed nature reserve; this is simply a possible treatment of a common in which, as you will see, all that the Conservancy ask—it comes in the following section—is that we should have some representation, either through the College Farm's representative or by means of direct Nature Conservancy representation, on the management committee. Previously we were talking about our actual nature reserves. In these other areas we simply want an advisory voice in the management or consultation where there is a

nature conservation interest. Of course, many such areas include arable land.

2015. I think we are clear now that there are many areas over which you want complete control as nature reserves, but because of the help you can give as a result of the knowledge gained from the study of those you think that the Nature Conservancy should be represented on the management of commons?—Yes—represented or even just consulted.

2016. *Chairman*: I am not quite clear what your difficulty is in regard to commons. I take it that you first try to get agreement under Section 16 of the 1949 Act. Is your difficulty then that you cannot find the commoners or that you cannot get them to agree?—We cannot get the last commoner to agree. In a typical case all but the last one will agree.

2017. Then Section 17 of the Act gives you the power to acquire the land compulsorily. Is it too costly to acquire all the land?—It is not our policy to use those compulsory powers. We never have sought to use them and it would be against our principles to bring them into operation.

2018. Evidently Parliament contemplated that you should have power to acquire the land both ways—either by agreement or by compulsory acquisition.—Yes.—*Professor Pearsall*: It is very difficult to do that with commons because the people with common rights cannot be traced.

2019. But surely there is no difficulty about compulsory acquisition. The land is simply acquired outright.—If you acquire the land, you do not extinguish the common rights. That is the difficulty.

2020. *Professor Alun Roberts*: Have you come across any commoners' associations which would perhaps be enlightened and reasonably receptive to the advice you offer? I am thinking of that piece of land in Caernarvonshire, the manor of Aber, of about 4,000 acres, which I know well, where any enlightened person today would agree that current farming practice is very detrimental to the land; speaking ecologically, it is sending it downhill. Have you had any success in approaching associations of commoners, voluntarily formed, as a halfway stage to total acquisition?—*Mr. Nicholson*: I wish we could discover such a body. We

have not yet been lucky enough to find an area in which there is one. We wish we could—we would welcome it.

2021. From your point of view, as the spokesman of the purely scientific interest in the ultimate destiny of land, if such associations could be set up in all cases do you think that they could be possibly satisfactory bodies through whom your good advice could extend its influence on the destiny of common land?—I think that all the experience we have shows that unless you have one person who takes a really full-time or intensive interest in land, any committee nominally responsible for its management is not capable of doing the right thing for, to take an example, the 'tension' zones which Professor Pearsall mentioned.—*Professor Pearsall*: You really want two things: a long-term programme—that is essential—and it seems to follow our experience that if you have that you must have a controlling body which may contain representatives of local interests but which is not primarily local. The trouble about local committees is that they tend to change their policy from year to year as they change their personnel.

2022. Has not a vacuum been left, if I may so describe it, by the break up of the old estates, and the disappearance of the court-leet? That has a calamitous effect biologically destroying the balance. Are the Conservancy of the opinion that voluntary associations could fill the gap left by the break-up of the manorial system? Do you feel it would be humanly possible by prompting, to direct the tendency in the other way?—*Mr. Nicholson*: We have very little evidence on which to form an opinion, but such evidence as we have is not encouraging. We wish it were more so. Our view is that where there is any authority on the spot, whether it be the owner of the soil or a body of commoners or conservators or any other body which is a going concern or is capable of being made a going concern and managing the land properly, we would favour it being revived and strengthened. Where there is no realistic prospect of such a body, we would like there to be a residual responsibility—placed perhaps on a county commons committee, which would look after all commons, unless there were some interested or potentially interested local agencies to manage them.

2023. *Chairman*: I want to come back to the legal issue, I am not quite clear about it. You make agreements under Section 16 or you acquire under Section 17. Professor Pearsall said that, if you acquire under Section 17, the common rights still remain, but can you not make byelaws under Section 20? There is a proviso to Sub-Section (2), but it does not seem to apply to people holding common rights.—We can make such byelaws and are doing so, but once again it causes very great difficulty in finding those with common rights—we want to be fair and make sure that the byelaws are not bearing harshly on particular interests. It is very difficult to know before we make them just what the impact will be. We soon find out afterwards!

2024. You soon find out afterwards because the commoners are entitled to compensation from you?—Yes. We are quite happy to pay compensation, but the trouble is that many of the people who feel sure that they have a right to compensation are unable to bring forward any written proofs sufficient to enable us to pay them, and this gives rise to a feeling of injustice.

2025. Is your concern merely about the general hostility to the Nature Conservancy which this kind of behaviour would create?—Yes.

2026. Whereas you want to encourage local people to collaborate with you, rather than the opposite?—Our policy is to dovetail in with all other uses of the lands rather than to come in and use our powers unilaterally.

2027. *Mr. Arnold-Baker*: You do not, in fact, want to create local opposition by throwing your weight about?—No.

2028. *Chairman*: Are you asking us to recommend a change in the law, to enable you to throw your weight about a bit more?—No. We have more powers than we think it right to use.

2029. *Professor Alun Roberts*: But do you believe that your participation, with the current users of the land, in the management of commons would be of mutual benefit? Without departing unduly away from established practice the local interests can be persuaded to make a fuller and more enlightened use of the land according to modern practice, which would still be compatible with the overall scientific interest on a long-term basis?—This can happen, where there

are individuals who will rise to the occasion. It depends on the attitude of a very few people in the locality.

2030. *Chairman*: Is your point that if there were some body responsible for each common with whom you could come to grips you would probably be able to negotiate an agreement?—Yes.

2031. *Mr. Floyd*: In other words, you would prefer to pick a bone with the Verderers of the New Forest than to have to deal just with a nebulous body of people with whom you could not come to grips at all?—Yes. I think, though, that unless there is a very well established body like that, we would prefer to deal with, say, the planning authority, which has a breadth of knowledge about land use, rather than a local body with a very narrow view. As Professor Pearsall pointed out, if you have a purely local body you get a very narrow view which tends to change as the personnel changes, whereas a county planning authority would have the advantage of professional advice and knowledge of all the competing uses.

2032. Would you be ready to make financial contributions towards such a body?—We would be willing to make agreements with such a body in respect of land of high scientific interest, and we are entitled to pay contributions where there is a statutory agreement; otherwise we could not.

2033. There would have to be a statutory agreement before you would be at liberty to contribute to the finance of the local management committee?—Yes.

2034. *Chairman*: To turn now to individual paragraphs, in Section 2, Principle of Multipurpose Use, you say '... generally multipurpose use of such lands is desirable'. Are your reasons for saying that as set out in the last paragraph of that Section?—Yes.

2035. *Professor Stamp*: I think that what you say about the principle of maximum use of the national land potential links up with your recommendations further ahead and rather suggests that your general view is that commons should be classified. Some of them would be kept as nature reserves but for others, you say there or elsewhere, you would welcome agricultural use, perhaps arable,

and you particularly stress afforestation of the higher areas. Are you really recommending some change from existing open land to a more intensive use?—Yes. Of course, it is not necessarily the case that existing common land is open. There seems to be a popular idea that if it is covered with scrub it is useful for wild life. That is not true. It can be as harmful for the fauna and flora as it is for agriculture and forestry, and we would like to see those areas of chalk grasslands, for example, which are now covered with scrub, restored to an open condition. Other areas, especially the upland commons, we should like to see put under trees. Of course, it is very hard to generalise.

2036. *Chairman*: Are you interested in scientific enquiries into the development of pests, as such?—Yes, we are.

2037. So you would like a few areas of scrub left about?—There is no shortage of those!

2038. In Section 7, Woodland and Scrub, you say '... the existence of common rights has also done much to protect the trees from direct human interference ...', and you make another reference to this later on. Is not one of the difficulties that the land owner—the lord of the manor—can, in fact, cut down the trees but cannot replace them?—*Mr. Nicholson*: Yes, that is so; we had in mind that there are some commons where there are 'lop and top rights', where the commoners would object to all the trees being cut down.

2039. *Professor Stamp*: Later in the same Section reference is made to the remaining woodland sites, as in the Cranham-Birdlip area of the Cotswolds; then you go on to say: 'All such woodlands are clearly likely to rank at least in Group B of the land capability classification in paragraph 6, and some, no doubt, could qualify for inclusion in Group A.' What is the implication of that classification of those woodland areas—that the woods ought to be swept away and the land used for higher purposes?—I think our next section gives the answer to that. We say: 'While some of the recently colonised scrub might best be cleared back to grassland, the majority of such woodlands would appear to be most appropriately con-

sidered for conversion to high forest of deciduous trees, except where the soil is suitable only for conifers, or in the relatively few cases where they should be retained untouched as museum pieces.' That is our view.

2040. Do you want to keep only fragments of them as they are and are you thinking mainly in terms of improvement?—Yes.—*Professor Pearsall*: I should say generally that that is our aim. We are nearly always concerned with the regeneration of what the vegetation and the animal life is or was.

2041. The same question arises in the following Section, Alpine Types, in the last sentence, where you say: 'Land use problems exist, particularly where common rights prevail, and there is a need to equate grazing pressure to the requirements of soil and vegetational rehabilitation and conservation.' In other words, it is a matter of fairly strict management again, is it not?—Yes.—*Mr. Nicholson*: What we mean is illustrated in Annex C.

2042. In Section 10 you refer to the management of chalk grasslands on traditional lines. What do you mean by 'on traditional lines'?—Primarily by sheep-grazing. Of course that means taking a particular stage in the long evolution of agricultural use but it is difficult to know what other description we could use.

2043. *Professor Alun Roberts*: Are you referring to the practice of diurnal variation of sheep husbandry on the downland—grazing the sheep on the downs by day and folding them on the ploughed land at night?—*Professor Pearsall*: There is very little of it still to be found, of course.—*Mr. Nicholson*: We feel that the sheep has become rather unfashionable and that sheep-farming has had two very bad knocks—first of all, from the two wars, when the accent was so much on ploughing, and secondly, from the rabbit. There is a favourable opportunity now, to some extent, to re-adjust the balance, and get rather more sheep, and that would be very helpful ecologically and from the point of view of the amenity value of the open sheep grazings.—*Professor Pearsall*: But may I say that the practical effect of ploughing and putting down good leys of chalk grassland is that cattle can be fattened

there instead of sheep, and practically all current agricultural treatment has been done with cattle and not sheep in mind—sheep are getting quite scarce. There are hardly any downlands left in the agricultural sense.

2044. *Professor Stamp*: But take North Wales: the old tradition on the hills was mixed farming, grazing a large number of cattle and a small number of sheep, and the swing over to sheep has brought trouble. In the same way, on the South Downs you have a changing agricultural fashion. But are you not seeking, for various reasons, to re-suscitate one particular form of use, sheep-grazing?—In that particular case it is necessary. Three years without grazing results in such a heavy turf that all the interesting plants are smothered and the associated insects tend to disappear. That is the problem. The only way you can get the level of the turf down is by intensive sheep-grazing—cattle do not do it; they bite high and leave the bottom of the turf untouched.

2045. *Mr. Floyd*: Would you agree that though we have come to think of the method as traditional, the former management of the South Downs really depended on the practice of putting a shepherd boy in charge of the sheep on the hill during the daytime and bringing them down to the fold at night. Now that is rather too expensive in practice and we have to realise that that particular type of downland management is linked with the South Down sheep and the Hampshire Down sheep, which are now being replaced by other breeds?—The change is also linked with the fact that there are now mechanical tractors which can plough anything; therefore why should anyone leave downland under pasture when he can get heavy crops off it?—*Mr. Nicholson*: We are having difficulty on one of our reserves in Hampshire, where there are sheep in the locality, in persuading the farmers to graze the sheep on the reserve because of the difficulty of fencing and the difficulties of public access with dogs. So even where sheep are there, we still have trouble in getting farmers to graze them on the reserves.

2046. *Chairman*: Is your point that you want some of these downlands under sheep for purposes of scientific investigation, not that it is a more

economical use to put them under sheep than cattle?—*Professor Pearsall*: Yes. It is really rather a particular problem of ours in managing our relatively small areas of nature reserves. We have to have sheep grazing in order to keep the turf low. Cattle will not suffice.

2047. But is there any objection to cattle from the national point of view?—From the national point of view, I personally would be all for cattle, of course.

2048. *Professor Stamp*: Turning to Sections 13, 14 and 15, with each of those types—lowland heaths, fens, marshes, salt marshes, sand dunes—is your real need to conserve certain specimen areas?—Yes.—*Mr. Nicholson*: For the national Nature Reserves, that is. We make the point that there is also the question of maintaining a reservoir of interesting animals and plants and that these common lands form such an important percentage of the available reservoirs 'hat one would have to take a fairly large sample in order not merely to have enough to study but to make sure that animals and plants did not die out. There are so many different, unpredictable factors. Take the question of the Armed Forces, particularly the weekend Territorials. We cannot find that any survey is made of the requirements for weekend training as distinct from permanent tank training, and so on. Commanding Officers say to us 'Can't we exercise our men on your nature reserve?' We find difficulty in saying no, but it is in direct contradiction to the objects of our management. If the training is of national importance provision ought to be made for it. We ought not to have all this difficulty and the Territorials ought not to be forced on to sites of scientific interest.

2049. *Chairman*: There is a sentence in Section 13: 'It is, therefore, the view of the Nature Conservancy that only in special circumstances should lowland heaths, subject to common rights, be permitted to become alienated to any agricultural or silvicultural use which would further limit the area of accessible open spaces and of heathland vegetation.' I read that in connection with the previous sentence about training facilities. It seems to suggest that you put forward that view not as having any direct bearing on your scientific interest but merely be-

cause you feel that some of those areas should be available for the public uses which are mentioned in the section.—I think our motive there is connected with our point about being the residuary legatee. We know, from bitter experience, that if there are a lot of requirements for the use of these commons and if a sufficient margin is not left for picnicks and Territorial training, and so on, they will come on to our nature reserves and destroy our scientific objects. It will be impossible to resist. We want to have a large enough margin to cover all the genuine uses.

2050. Do you want to freeze this land then as common in order to keep people off your land?—Yes, in order to spread the demand for this lowland heath—not any other type of common land—sufficiently widely to ensure that there is enough at any given time that has not been burned, trampled or had Bren Carriers run over it and so to preserve the scientific interests in the habitat as a whole.

2051. *Mr. Arnold-Baker*: That is coming back to your point, to preserve some small piece of land which is of interest you would have to have a buffer zone all round it?—Not necessarily all round it, it might be ten miles away as long as it filled the competing demand.

2052. *Professor Alun Roberts*: Do you think that there is a threat to the continuance of purely scientific and cardinal investigation on the Brecklands in the multiple developments taking place there now? The Elveden estates have been reclaimed for a higher degree of agriculture, there is forest planting at Thetford, and the land is used for army exercises. Are you alarmed lest a residual core should not be left?—We are definitely alarmed. Take this very good example: there are projects for what is called 'de-canting' the overspill of London population at Thetford and possibly at Brandon. If that is done a recreational use will automatically be created on some local open space and if all the land has been shared out between afforestation, agricultural reclamation, the United States Air Force, and the other users, and no margin has been left, then the very few nature reserves in that area which are of great importance for research as well as for conservation, will be overrun. It is a very good example.

2053. *Professor Stamp*: You draw a very interesting contrast in the third paragraph of Section 16. You say:—

'With the spread of mechanical and chemical methods and the subjection of both agriculture and of forestry to increasingly artificial processes, much of the traditional knowledge and wisdom of working with instead of against nature is being lost.'

Does that mean that your scientific investigations are rather different from those which, say, the agriculturalist would undertake?—*Professor Pearsall*: I think that is probably true. We, of course, like to use mainly natural methods of altering the countryside rather than purely chemical and mechanical ones.

2054. You mean getting away from weed-sprays, and so on?—We have no theoretical objection to weed-sprays, but we do think that in such a case one must be quite sure that one knows what the long term effect is going to be as well as the immediate effect.

2055. *Chairman*: In the last paragraph but two of the Section you seem to suggest that any recommendation which we make is almost certain to be wrong, you say 'It may well be that as and when the answers to these and other fundamental questions become known the problem of the future of common lands may in some respects look different from what it is today.'

—*Mr. Nicholson*: I think that relates to the point that Professor Alun Roberts made earlier, that we have got to take account of the fact that today only first techniques are being developed, and it may be that some time in the future we will look at the thing differently. Therefore we have not only to keep a scientific research programme going for the short term, but we have to have more land in reserve that can be used for future research when other things emerge which may not yet have been developed, just as pollen analysis for example has recently changed our picture of ecology.

2056. *Professor Stamp*: It appears then that the Nature Conservancy is worried lest this Commission should suggest fresh legislation which will raise a whole host of new problems for them?

—*Mr. Nicholson*: I think we are alarmed at some of the pressures which have given rise to the setting up of this Commission. We welcome the Commis-

sion in the hope that it will show a way out.

2057. *Mr. Arnold-Baker*: There is a reference in the last sentence of the last paragraph of Section 16 to the practices of other countries. Would the representatives of the Conservancy say what are the other countries, and what practices they would consider would be relevant to our problem?—*Professor Pearsall*:

I am not quite clear whether you are referring now to common land, or to the general question of scientific control and conservation. There is a tremendous amount of information about scientific conservation and land use that we have not referred to here. Common lands, I think, are mainly a British problem.—

Mr. Nicholson: I wonder if I could give one practical illustration. Last year I inspected the Muskingum scheme in Ohio which covers one of the head water tributaries of the Ohio Valley in which they had most disastrous floods before the first war. They set up there a special ad hoc body which took control of the top of the watershed. It does a lot of planting, not primarily for timber production, but for watershed control, and they have reservoirs, primarily for flood control, some of which are left empty year after year. Not only flood control is taken into account. There are recreational areas, camping sites are let out and on some of the reservoirs there are boating and catering concessions. All that type of thing is really relevant to the problem of common land, because wherever types of land are used recreationally, for flood control, water conservation and so on, the various uses are often taken for granted; but in some cases those uses require special provision to be made for them, and it was that type of example that we meant.

2058. Which other countries' experience would be relevant?—*Professor Pearsall*: It depends on what you want to investigate, but in general I should have thought water control is probably much more highly developed in the United States, and forestry control much more highly developed in Scandinavia and Finland where, of course, it is a major economic problem. They can give us a great deal of information about the effects of deforestation. I would put it that most of our high level commons are man-made deserts.

2059. *Professor Stamp*: Might I suggest that we really cannot learn

much from the United States. They are suffering from the mistakes of the last two or three generations. We have had our land use problems largely settled by a process of trial and error over two thousand years and that side of the problem is entirely different. I think the Americans can probably learn an enormous amount from us, but I am not quite sure about the other way round.—I would agree with you, but there is one thing that you can study in the United States and in New Zealand that you cannot study here. You say that our land use problems are two thousand years old and the damage was largely done then. In the States it has been done within the last two hundred years and you can go and see what is happening, you can see the day to day effects of particular sorts of treatment. Ours is so far away it is often very hard to say what caused it.

2060. Is not the damage which is being done in this country at the present day mainly the all-round degeneration of common land to which you have referred which has come about for reasons which are economic in origin?—The reasons are economic but there was a very great deal of soil erosion and general destruction of plant communities, and so on, when the land was cleared in the first instance.—*Mr. Nicholson*: Might I just add that while I would agree with Professor Stamp if he is talking about the agricultural use of land, I think we have a lot to learn from the United States and other countries about the indirect advantages of land being used, for instance, as catchments for water supply, for flood control, or for demonstration purposes for schools and universities. There are many uses that are very embryonic in this country and are rather more developed in America and in Scandinavia. I think there would be advantages in studying the experience of these countries, and if the Commission would like some specific examples we would be very glad to suggest them.

2061. *Mr. Floyd*: Professor Pearsall mentioned the long term damage which has befallen our common land, but we have examples of something very modern and very immediate. I mean the retrogression of the Surrey commons by the advent of the motor car and the uncontrolled dog, so that grazing has become impossible. Therefore the commons are encroached upon by gorse and

scrub. That is something we can see at the moment under our own eyes. I would like to hear something about the Nature Conservancy's suggestions for dealing with the encroachment of gorse and scrub, and so on.—*Professor Pearsall*: The Surrey commons are all in an intensively agricultural and very heavily populated part of the country, and there are very large amenity demands as well as the comparatively small but extremely important scientific ones. The deterioration is, I think, practically always of a local sort, varying from one common to another.

2062. Is not deterioration mainly due to lack of grazing? It is too dangerous to put animals on the common because they get hit by motor cars.—This raises what seems to be the inevitable problem with commons, how are you going to get what you want? Everybody wants some form of public access, and at the same time some form of public control. There must be some form of control if you are going to do anything like turning the scrub into grassland or woodland, or what you will.

2063. Have you any suggestions other than burning or huddozing for keeping the scrub under control?—We have, but I am not sure that they would necessarily be very suitable for use on an open common. It comes down to the problem of public control.

2064. *Chairman*: Next, in Section 23 you say:—

'Illegitimate uses should be restrained while legitimate uses should be studied in consultation . . .'

and so forth. Our problem is how can this be done. Have you any suggestions about that?—We have dealt with this problem, of course, in several individual cases, but we start from this position. No common should remain a no-man's-land. Every common should have a management authority. If there is no other management authority available the county should take over through a special commons committee with its own staff specialised in the management of this particular form of land. That, of course, would apply only in the counties that have a large acreage of commons. A plan should be drawn up for the long term management of each common which would involve the study of multi-purpose use and also the study of public

control, whether a warden or wardens should be employed, whether bye-laws would be necessary, and so on. We hope that the minimum of control will be necessary, but there are some commons which are obviously in effect public open spaces and must be properly managed as such. Of course we would be against control for control's sake, but we think that if a management plan were drawn up for each common, or group of commons, it would be possible at that stage to dovetail in many of the apparently conflicting interests. The day to day management would be in terms of that long term plan, and any changes in management of a fundamental nature would have to be referred back and be subject to further consultation with the interested parties.

2065. What body is to do this, the lord of the manor and the commoners by themselves, or failing them the county council?—Yes. We think that where there is a lord of the manor and commoners who can act, they should be given the chance to act first, but if they are unwilling or unable to act, and if there are no other bodies such as conservators who have already been set up, then the county should come in to make sure that no common will be left derelict and unmaintained.

2066. Would you come in then by making agreements with the local committees?—We already are in contact with all the planning authorities, and we would in most cases give advice as required to the counties concerned. In some cases we would ask to have an assessor on the managing body. To my mind it is analogous to the position of local nature reserves which are set up under Section 21 of the Act, where we have similar consultation. Several counties are using those powers. They consult with us in Cumberland at Ravenglass, and in the North Riding at Farndale, and in Lincolnshire at Gibraltar Point and it works quite well. We see an analogy between these arrangements under Section 21 and the relation that we might have if the counties took over a residual responsibility for such commons as could not otherwise be managed, but we attach importance to management being on a multi-purpose basis wherever possible, and therefore the management should not be in the hands of any narrow interest.

2067. Would that have the effect of creating a local committee consisting of representatives of the lord of the manor and the commoners?—There would have to be provision that they should consult the other interests. I have said earlier in reply to Professor Roberts while we would like to think that that was a practical way out, the number of cases where such a local committee would materialise would be rather small.

2068. *Mr. Lubbock*: Would you produce a number of model clauses which would be intended to fit in with any scheme of the local body? Otherwise they might make schemes purely in their own interests?—Model schemes certainly. We put the schemes at Ingleborough and Aber in our memorandum to show how model schemes might be prepared for each type of common. It could also be done for lowland heaths, and the local committees could have the model to work on and depart from as much as local circumstances dictated.

2069. *Professor Stamp*: Is there a conflict of ideas? You say in Section 24, Formulation of a National Policy;

'The Nature Conservancy hope that such a statement . . .'
that is a national policy

' . . . would include the principles of maximum use of the national land potential, and give preference to multi-purpose use over exclusive use.'

Would not the maximum use of the national land potential involve the abandonment of the policy of the Nature Conservancy? — *Professor Pearsall*: No, not necessarily. Surely this is the sort of problem we are dealing with: there are types of land practically all taken up which are used for intensive agriculture or forestry: there are transitional lands, mostly marginal, and rather unproductive lands, which are so used also, and which are, for the most part, badly run down—I am speaking quite generally—all over the world. It is those areas which are now being looked at from the point of view of production, and it is clear, speaking in the wide sense, that in some cases the production can be increased, but there will be considerable areas where you will have to have either, as they have in India, protection forests to prevent excessive desiccation of the country by

giving the chance to recharge the water reserves, and so on, or protected areas of other descriptions. These must be considered as protection zones, and not as maximum production zones, and it is in that sort of place that I think that you get the need for these varieties of land use.—*Mr. Nicholson*: We tried to explain the idea in Section 3 where we define biological capital and income, and point out that it is possible to draw on some forms of biological income which run down the biological capital. If you do that you are not really applying the principle of maximum use of national land potential in the long term, although you may be if you think only of the short term.

2070. *Chairman*: Are you not expecting rather a high degree of public spirit from the committees of commoners, that they should think not merely in terms of making a profit, but in terms of the long term advantage to the land and to the country generally?—*Professor Pearsall*: That is why we would rather have, say, the county authority than a more local body.—*Mr. Nicholson*: But also in Section 25, paragraph 3, we say that provision should be made for local hearings where there is disagreement, with a right of appeal. We envisage that there will be pressure on the management authorities to take account of the different interests, since otherwise appeals may be made.

2071. Suppose that the appeal has been heard and the commoners' committee have been told that they are spoiling the land from the point of view of future generations. What would happen then?—Either the status quo would remain for a further period pending agreement, or the county council as the residuary authority, would take over and put in its own scheme.

2072. Suppose the local body refused to function and said 'We do not see why we should do this, it is no benefit to us'. Would the county take over?—*Professor Pearsall*: It might well be that the mechanism of our proposals would have to be given a good deal more thought. One can see the difficulties local committees may be faced with by pressure of public opinion. I should have thought that in the long term the development of ideas about conservation elsewhere would have its effect in any

particular case. You cannot force people in this country, and you have to proceed rather carefully. Some counties have tackled such things as planning and amenity problems on pit dumps and pit wastes. A great deal has been done just by having one man who talks to the local people and to the firms which dump the material, and gets them to agree to do something about it. A great deal has been done by that rather simple educational method, and it is that sort of approach which seems to offer perhaps the best solution of this type of problem.—*Mr. Nicholson*: Might I add that I was assuming that if the county did take over it would itself set up a local committee for any common or block of commons, and that it would not necessarily administer the common from the county capital, but would have a local committee working within the framework of its general policy.

2073. The procedure contained in your ten recommendations in Section 25, leaving apart altogether the question of control of the commons, would be pretty expensive. Is it your idea that the cost should come out of the county rate?—*Mr. Nicholson*: We were assuming that all capital expenditure, including any initial rehabilitation, would be a reasonable charge on public funds, and we had in mind the National Land Fund as being the obvious source for this purpose. On the other hand the cost of maintenance should be borne by the county to the extent that the county could reasonably carry the burden. Payments made for concessions, and so on, should be paid into a pool fund and where commons are used by large numbers of visitors from, say, Birmingham or London, the user county boroughs should be asked, as in the case of the Green Belt, to make a contribution towards the county where the common is situated.

2074. *Mr. Arnold-Baker*: This sounds as if you are expecting rather large sums of money to be spent. As I understand it, you say that finance ought to come from central funds to some extent as a sort of capital grant, and then you say that maintenance, in so far as the county can stand it, should be imposed upon the county. What sort of figures have you in mind?—We have not made any estimates, but we are in a position to say since we manage a good deal of this

type of land ourselves that the cost is not very high. The most expensive capital items are fencing, where that is necessary, and initial clearance, and the main maintenance cost, of course, is the salary of a warden where one is necessary—that is far and away the biggest item in maintenance.

2075. Are there going to be counties that are unable to bear the cost of any necessary wardens?—Yes, counties like Merioneth, where the penny rate raises very little, and the acreage of the commons is very large.

2076. *Mr. Floyd*: You mentioned county finance, but most of the hill land in private hands which is being improved now is benefiting from central subsidies. I feel it would be very difficult if a hill farm on one side of the fence enjoyed national subsidies for land improvement while for a common on the other side of the fence any subsidy had to come from the county.—We would contemplate that once there was an efficient managing body that body would qualify for any grants and any payments, and that the county's share would simply be to find any residue.

2077. *Chairman*: I have one further point on the fourth recommendation in Section 25. You say:—

'One possibility would be to institute a national pool fund into which would be paid moneys received for concessions, such as grazing, tree planting and in some cases catering, other than payments due to owners and commoners.'

I wondered what you meant by the words 'other than payments due to owners and commoners'.—*Mr. Nicholson*: Where land remained in the hands of the lord of the manor, the lord of the manor obviously would be entitled to charge a rent for some of these things. We had in mind the parallel case of the payments we receive. We can obtain a nature reserve in one of three ways; we can buy it, we can lease it, or we can make a statutory agreement with the interested parties. We envisaged that some of the schemes would be operated by the owner; in other cases the land would be leased, and then the right to this revenue would not remain with the owner.

2078. *Professor Stamp*: I would like to refer to the first recommendation in Section 25 where you say:—

'Some agency or group of agencies should be charged with the survey of existing common lands . . .'

We have in this country a rather expensive Soil Survey. Is that doing the necessary work, or is it not meeting your needs?—*Mr. Nicholson*: It is not simply a question of soil survey, because other matters, such as minerals are involved. Some commons have gravel under them, and the fact would have to be brought out, whether possibly there were extraction rights. There is the question of water catchment use, and of the value of the common for different uses such as camping, and so on. The issue is rather wider than soil survey. The Soil Survey looks at the land in the terms merely of its soil, but a survey of soils, of course, would be the basis of our survey.

2079. You would agree that a survey of existing commons is a first and prime essential?—Yes.

2080. With all your characteristics and functions, is the Nature Conservancy a body which could undertake that?—We could help in it. A lot of people would be interested. We would certainly do our part.

2081. *Chairman*: Would the Nature Conservancy be the right body to decide whether any one common was the sort which might be used for recreational purposes?—We would be willing to help in reporting on all the physical characteristics of the common, so that all the factors could be taken into account.

2082. *Professor Stamp*: May I turn to the second recommendation in Section 25? You refer to 'an ecological plan and provisions for bye-laws, wardening, public control and provision of fences, gates, footpaths, regulation of burning, and . . .'. Does that mean you consider the fencing of commons as likely to be necessary?—*Professor Pearsall*: If you are going to exercise any control of land use you have practically always got to fence. I think that would have to be considered as a possibility.

2083. It comes back again, does it not, to the same point we were on earlier,

the need for very strict control of common lands?—I think it is a question of how far it is possible to exercise control over access. I think controlled access would satisfy a great many of the needs of the ramblers, and so on.

2084. By controlled access you mean fencing with stiles?—Yes, if it is necessary to fence there should be stiles. But I think that more than anything else if,

for example, you are going to afforest a large area of land you need nice open glades with appropriate vistas—a little bit of landscape gardening, if I can put it as crudely as that. It fits in with the ecological plan.

Chairman: Thank you very much. We are most grateful to you for your memorandum and for the evidence which you have given.

(The witnesses withdrew.)

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HER MAJESTY'S STATIONERY OFFICE

MINUTES OF EVIDENCE

15

Wednesday, 31st October, 1956

WITNESS

Mr. W. M. F. Vane, M.P.



LONDON

HER MAJESTY'S STATIONERY OFFICE

1957

NINEPENCE NET

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 31st October, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence Submitted by Mr. W. M. F. Vane, M.P.

There is no doubt that timber on commons has been sadly depleted over the last 40 years. The quantity was rarely great, but the demands of two wars and the incidence of death duties have often taken everything of much value. It has been impossible to replace these losses because there was no authority for the fences which the young plantations need to protect them in their early years against sheep, cattle, deer, rabbits and mankind. Surely this ought to be put right and lords of manors, if they previously owned the timber, be enabled to replant and to protect the young trees or plantations. Otherwise someone else must be given the power, but it seems fair to give the 'owner' the first chance.

The woods which I have in mind were mostly not large blocks but rather small clumps and strips, which must have added to the amenity as well as sheltered some of the grazing ground and so increased its value for stock. And we ought not to forget that small woods, when properly tended, can yield a lot of timber and timber is too valuable a raw material for us to ignore any chance of increasing the supply.

You will have sensed from reading and hearing evidence that there are still some people who suffer from a sort of phobia about trees—particularly conifers. There is no doubt that we have grown accustomed to the peculiar beauty of some of our bare fells—although there are some gloomy spectacles too, such as erosion which properly sited plantations can help to check.

In general, I would say that it would be a pity greatly to change the pattern of the central fells. One particular danger lies in the alteration to the general scale which trees can bring. But in the outer districts with their less rugged nature and valleys which are often wooded already, the same arguments do not apply and plans for larger plantings—parish woods or any others—should not be turned down too hastily.

Blocks of young trees are often not very beautiful, whether they are oak or spruce—but old trees must be young before they are old, and so one has to be patient. I would say that the most suitable woods for the Lake District are 'uneven, aged, mixed woods', and these take time to assume their final form and beauty. Once

achieved, however, they should go on more or less for ever—such as some of the magnificent woods of silver fir and beech in the Swiss Jura, where the beauty lies both in the trees themselves and the carpet of wild flowers, particularly oxlips in every open patch.

I don't want the Lake District transformed into an English Jura, but I do think that any consideration of our problems that does not take trees fully into account for both their usefulness and their beauty must be incomplete. I believe it is already being shown in Northumberland that the only valleys where the drift of the population away from the land is being arrested are those where there are substantial woodlands and opportunities for part time as well as full time forestry work.

Examination of Witness

MR. W. M. F. VANE, M.P.

Called and Examined

2085. *Chairman*: We are most grateful to you, Mr. Vane, for having given us your memorandum, and for coming before us when you have much more important things to do. On your first paragraph I wonder if you could tell us whether or not the lords of the manor in the Lake District are anxious to carry out afforestation on their own account?

—*Mr. Vane*: I know of two or three who are forest minded. At such meetings as those of the Country Landowners' Association I have heard the view expressed that it was a pity timber had to be removed from commonland without any chance of replacement. I have never felt there was any great pressure to do anything really substantial.

2086. *Sir Donald Scott*: Could you tell us what you think the life of a protecting fence would be in your part of the world and very roughly what the cost would be?—It depends what you are protecting against. I hope we shall be spared the need to fence against rabbits. Even so, a wire fence would have to be substantial to stand against snowdrifts and sheep. The cost of erection depends on the accessibility of the site and the problem of transporting the material there. I would not like to give a figure. The life of a fence depends on the material used for the posts. Some timber would last four or five times as long as others.

2087. *Professor Stamp*: You say, 'There is no doubt that timber on commons has been sadly depleted over the last 40 years'. Have you positive evidence of that?—One sees stumps of

trees which have been removed mainly to meet death duties and the demands of two wars; there are patches where there were once small plantations and now only stumps are left; but I do not know of any case where a large block of timber has gone.

2088. *Mr. Lubbock*: I take it you are referring more to conditions in the north west?—I am thinking of the upland commons in the hill areas; these I feel present a problem all their own and ought not in the circumstances, to be considered together with, say, commons near London.

2089. *Professor Stamp*: Is the position that the lord of the manor has no right to replant timber which is his property and which has been depleted? Is that the point in your first paragraph?—I am not a lawyer: but I should have thought he had the right to replant, but not to protect the young trees once he had planted them.

2090. *Chairman*: So long, that is, as he does not interfere with the rights over the common.—I imagine by ancient custom he would have to avoid interference.

2091. *Professor Alun Roberts*: How has the depletion of timber come about? Is it because of total clear felling or through the use of the timber in the normal way for estate purposes such as fencing?—I cannot quote you chapter and verse—I have not examined any particular commons in support of what I say. Mine is just the general impression of someone who has lived and worked near a typical hill area most of his life. I should

think it has come about in both the ways you mention. But with the tightness of money for estate purposes, or under the pressure that existed during war time, the clumps of old trees have disappeared on commons as they have elsewhere.

2092. *Mr. Lubbock*: Are not a good many of the woodlands in the central fells disintegrating through sheer old age?—I think that is true, and especially the small, stunted oak, which has been planted much too high up on the fells. It has never grown well there. Those woodlands are grazed by sheep, but there is not a very large area in the central area of the Lake District.

2093. *Professor Alun Roberts*: Would you say there is a sense of regret that the old pattern of the scrub woodland is disappearing?—The old scrub woodland has a certain amenity value and some of it on the lower slopes now has probably a much higher value for wintering hogs than for anything else.

2094. How do the local inhabitants of the Lake District regard the change aesthetically? Is there any regret at its passing, or are they accommodating themselves to the appearance of the bare fell without protest?—They do not always take the same view as the visitors. I do not know of any great feeling of regret this depletion of timber has happened. But I have had many a person tell me that it is a pity there could not be more shelter in those districts. There may be some regret. Of course, there are a number of wood using industries and turnery works in that area who will say that there is nothing like a sufficient supply of suitable poles coming on. They provide a considerable amount of employment in some villages.

2095. *Mr. Floyd*: Would you generally prefer to see shelter belts planted fairly high up the fells or would you prefer to see the ghylls and corries planted for sheep to get into in the winter?—I do not think it is much good putting them on the top: they should not be too high up. The sort of thing I have in mind is a combined operation for making these districts more productive. This would mean in the beginning planting on the lower slopes, deliberately avoiding the best sheep land. My idea would in no sense involve any great inroads on sheep stocks.

2096. *Sir Donald Scott*: Do you think there is any future in the idea of specialised planting for hogg wintering? I understand experiments have been done recently.—I think there well might be. Wintering hogs on the low ground is not so popular as it used to be and the hill farmer is often in difficulties in finding somewhere to winter his hogs without having to pay a high charge. There is no advantage in transporting the hogs a very long way away, if you can winter them near home.

2097. *Professor Stamp*: I am not quite clear what implication is intended in your third paragraph where you say that some people suffer from a sort of phobia about trees. You suggest there should be more planting. Then by contrast in your fourth paragraph you say:

'In general, I would say that it would be a pity greatly to change the pattern of the central fells.'

You will be familiar with the agreement between the C.P.R.E. and the Forestry Commission over which areas shall and shall not be planted. Are you in general agreement with that?—The Lake District is very precious for recreational purposes in this country and its special character must be borne in mind. I do not think that if one went ahead slowly with the sort of combined operation which I feel is bound to come of rather more forestry integrated with sheep farming that it would be at all detrimental, but it would be unwise to plant right on the hill tops at too great a height for tree growth, although here and there one might improve the pasture by the shelter.

2098. Do you visualise a central core of the Lake District remaining very much as it is at present and planting being restricted to the margins?—Yes. It is not part of my idea that there should be large scale planting on the central group of open fells.

2099. Your view is broadly in line with the agreement between the C.P.R.E. and the Forestry Commission, is it not?—I think it probably is.

2100. *Chairman*: In your third paragraph you mention erosion, about which few people have spoken to us. Can you tell us what is happening to bring about land erosion?—It would be a pity to destroy some of the screes on the fellsides, but if you go a little distance away from

the centre of the Lake District, or if you travel through Cumberland and Westmorland on the Euston-Carlisle main line and look out of the windows you will see the signs of erosion. You will also see patches of woodland where erosion has been checked and patches where the old woodland has gone.

2101. Is this due to over grazing or merely to the removal of the timber? —Bad husbandry generally, I would say, in asking the steep side of a fell to do a job which is really beyond it.

2102. *Professor Stamp*: Have you given any thought to the much discussed problem whether the Lake District National Park should be just the central core of moorland or whether it should extend to the preservation of the coastline round Ravenglass and so on?—I have not given it much thought. I certainly feel that on the whole it would be a pity if our Cumberland coast came to look like some parts of the south coast.

2103. I think there are some commons which extend down to the coast, and that there is a possibility of the large scale reclamation of land on the Kent estuary, for example. Have you any views on the reclamation of coastal marshes in Cumberland?—My knowledge of the Kent estuary is not sufficiently detailed, but I do have a feeling that we in this country ought to be able to increase our agricultural land by estuarial improvement, and not only by nibbling at the edges of the fells.

2104. *Mr. Floyd*: We have had evidence from the Forestry Commission that they thought that in certain cases, common land might be planted as a parish forest, whereby the ownership of the forest would eventually belong to the local community. Do you feel that is a practicable suggestion?—I have thought a great deal about this and, speaking in general terms, I think it would be a good feature of the combined operation, if I may use the same term again, to create a local interest in woodlands in this way. I have always hoped that any better system of regulating commons will make it possible to plant such parts of them as will not conflict with agricultural interests or with the special interests of the community. Some of the new woodlands could belong either to the commoners or the local community. I believe the French have developed a scheme of financing such ventures, which suggests to me that this idea is feasible.

2105. *Chairman*: Would it not involve fencing off the land for 20 years or more?—It would involve something of the sort but when, in various speeches I have had to make about this problem people have pressed me for a figure, I have always said that I thought if we had no more than 10 per cent. of the highlands planted there need be little or no reduction in agricultural production. Moreover it would bring an alternative form of employment into the district, making it easier for local authorities and others to bring services to the district and arrest depopulation. But exactly what machinery one can devise to make the commons help towards any such ideal while still having general goodwill behind it, I would not like to venture.

2106. *Dr. Hoskins*: In view of the difficulty of replacing the trees which have been lost or felled, how did such woods as do exist, ever come to maturity at all? What prevented them, in the past, from being eaten away?—They must have been fenced.

2107. Even though the land was common?—I think they must have been fenced. I do not see how else the animals could have been kept off. You will be aware of the damage caused to unfenced timber in the Mediterranean countries by grazing animals.

2108. *Chairman*: The restriction on fencing came in only with the 1876 Act, reinforced later by the 1893 and 1925 Acts. Previously if there was a temporary enclosure I do not think it was unlawful. Now I understand one has to get the sanction of the Minister of Agriculture. —I do not believe that fencing is possible now. I believe it was possible under war time regulations to fence certain farmlands for three years, but that power has never been held to include a young plantation.

2109. Is the system of planting small patches for shelter of considerable antiquity?—I think there are certain parts of the country where it has been done in the past. One cannot really say the result has ever been of outstanding beauty. One does not want the whole of England developed on the same pattern.

2110. In fact it is quite an ancient system which is prevented nowadays by relatively modern legislation?—I think so. In parts of the lowlands of Scotland, which I admit I do not know

well, it always strikes me that such tree-planting must have been a thing to do at one time. I believe some of their agricultural improvements came rather later than further south.

2111. *Professor Alan Roberts*: I think that as a matter of historical fact it was part of the spacious development in the golden age of farming in the 1850's and '60's. The patterns of useful shelterbelt planting between Penrith and Newcastle, which we have heard about today are all the products of the '50's and '60's.—Those are the conifer plantations in the main. I think the oak, ash and birch, which one finds in some districts go back further.

2112. *Professor Stamp*: You say in your final paragraph that you do not want the Lake District transformed into an English Jura. Is it not correct that a great many types of exotic conifer, such as Douglas fir and a number of other firs, flourish very well in the Lake District?—I would not put the Douglas so high on the list, but there is no doubt that in the Solway and Morecambe Bay areas the spruces grow extremely well. The Lake District is a good area too for planting mixed woods. Oak grows very well and better than beech. Most of the conifers grow reasonably well.

2113. Would you advocate tree planting as a future use for some of the commons so that they would be more productive from the national viewpoint?—Speaking of the countryside as a whole I do not see why common land should be excluded from that sort of development where it is found that some kind of union between agriculture and rather more extensive tree planting is the right course. But I do feel that in special areas such as the Lake District we do not want an 'English Jura', even though the Swiss Jura has some lovely features. I think we ought to have something less uniform in mind and avoid encroaching on the true centre of the Lake District.

2114. What is your view of the work which the Manchester Corporation have done around the reservoirs?—I have the greatest possible admiration for the man in charge and his work as a forester. I do have one or two small criticisms on amenity grounds. Some of the fences are urban in character. We all have our own

tastes. I think it is a pity the main block has got quite so big but the way it goes up the mountainside is not at all unattractive; one does not want every hill and lake treated the same way.

2115. Does not the planting prevent public access to the actual shores of Thirlmere?—I think that is so, and I am sure the Corporation have tried to meet different criticisms, but it is a big area to administer and not the sort of thing I had in mind when writing my memorandum. As the plantations get older they will offer more opportunity for access and have a more broken appearance and texture.

2116. *Professor Alan Roberts*: Would you agree that the owner of common land is extraordinarily privileged in not being under an obligation, as is the private owner immediately adjoining, to re-establish and rehabilitate his existing woodlands? Is there any justification for that distinction between the obligations of the lord of the manor and the owner of a freehold estate immediately next to each other?—I must say it is a question I had not considered.

2117. In fact unless the private owner is positively willing to rehabilitate his woodland the obligation to replant can be very hard on him. The lord of the manor's property however is almost worthless. Would any harm be done him by taking from him something which is worthless?—In the overall national interest I think it is regrettable anything should be wasted which could be put to some use without harming one's neighbour and to take someone's property is generally to harm him.

2118. *Mr. Arnold-Baker*: Is therefore the phobia about trees of which you speak really a form of aesthetic conservatism?—Everyone is entitled to his own opinion. When people go to the National Gallery they do not all go to look at the same picture. As a rule there are few things which give a great deal of aesthetic pleasure to everybody. The draughtboard patches of woodland on the hills are considered by many people to spoil the landscape. But we have got used to telephone wires and man-made stone walls. By some people a bare pattern of stone walls is considered very beautiful.

Chairman: Thank you very much for coming, Mr. Vane.

(The witness withdrew.)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

16

Wednesday, 31st October, 1956

WITNESSES

The Defence Departments



LONDON

HER MAJESTY'S STATIONERY OFFICE

1957

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List of Witnesses

WEDNESDAY, 31st OCTOBER, 1956

MR. H. H. HOBBS, C.B.
Comptroller of Lands and Claims

MR. L. V. SUMNER
Assistant Secretary
on behalf of the War Office

MR. T. C. G. JAMES
Assistant Secretary

MR. C. E. R. HAYWARD
Chief Lands Officer
on behalf of the Air Ministry

MR. A. F. COOPER
Assistant Secretary
on behalf of the Ministry of Supply

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land at 26, Sussex Place, London, N.W.1

Wednesday, 31st October, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. ARNOLD-BAKER

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence submitted by the War Office, the Admiralty, and the Ministry of Supply

1. Common land is used for training purposes by the War Department (some 75,000 acres) and by the Admiralty (8,000 acres). The Ministry of Supply also use about 150 acres of common land for soft running tests of tracked vehicles.

2. The circumstances, scope and amount of the use vary, and, as a consequence, the degree of interference with amenity user by the public also varies; in many cases there is no interference with public access; but in cases where there is a danger to the public, access continues subject to regulation under bye-laws, made under Part II of the Military Lands Act, 1892. Permissive public access may often continue subject to this regulation even after extinguishment of Rights of Common in cases where the land remains unfenced, though it has ceased to be common land.

3. The use of uncultivated common land for military training is deeply rooted in English history, from the time when butts were set up on every town and village green and archery practice enjoined upon inhabitants by statute. In 1825, for instance, the Law Officers of the Crown advised:—

'The Militia Act requires that the Militia shall be trained and exercised. No provision is made as to any place for that purpose and we conceive therefore that from necessity the training would be justifiable upon uncultivated commons over which usually there is a general right of way for foot passengers.'

4. It was implied in this advice, and it is true today, that uncultivated common land is in many ways most suitable for training. Not only does the nature of the ground, broken by clumps of heath and gorse and bracken affording cover, lend itself to such use, but since the land is uncultivated, military training is unlikely to damage the land to any great extent. Though training can be carried out over cultivated land by agreement with owners and on payment of compensation for damage done, the fact remains that the damage represents a loss to the community of the work previously done and rendered nugatory by the damage. Conversely, common land may appear to be waste, but if it is being used to train the defence forces of the country it is performing a valuable function in addition to providing amenity space and some grazing for stock.

5. In order to obtain the use of common land for training, the Department have employed many different methods of acquisition. For ordinary common land which is unaffected by special local Acts of Parliament (such as the Metropolitan Commons Acts) or on which no special difficulties arise, the Department may acquire the interest of the owner of the soil, usually the Lord of the Manor, and then, according to the intensity of the Service user of the land and to the degree of danger arising from that user, may either extinguish the Commoners' Rights on payment of compensation pursuant to the Lands Clauses Consolidation Act (see Appendix 'A') or may enter into an agreement with the commoners under which the commoners agree to the Department's user, and consent to comply with the Department's Bye-laws, subject to the payment of compensation for interference with the exercise of their rights and for stock casualties.*

In other cases the Department may enter into agreements with the owner of the soil, usually the Lord of the Manor, and the commoners, on lines similar to the above, without acquiring the interest of the owner.

6. In a few cases, the use of common land for Service purposes is authorised by an Act of Parliament, or, in the case of regulated commons, may be permitted by Bye-laws made by the regulating authority or by written agreement with the authority. The opinion that it is proper for common land to be used for training purposes has received repeated statutory confirmation in this way. The following enactments may be instanced:—

Stamford Inclosure Act, 1871.

Wimbledon & Putney Commons Act, 1871.

Tooting Common Act, 1873.

Plumstead Common Act, 1878.

Wormwood Scrubs Act, 1879.

Strensall Common Act, 1884.

Section 49 of the L.C.C. Parks Bye-laws made under the London Council (General Powers) Act, 1890.

Great Yarmouth Corporation Act, 1897.

Law of Property Act, 1925 (Section 193 (6)).

Ashdown Forest Act, 1949.

7. The amount of use of particular commons for training and other defence purposes is liable to fluctuate over the years in accordance with changes of weapons and methods of warfare. The commons and open spaces in the London area, formerly of great importance for the training of Militia and, later, Territorial Forces, as is evidenced by the Acts and Bye-laws above referred to, are relatively little used in the changed conditions of today. The recent need to provide training facilities for the Territorial Army within a reasonable distance of the men's homes or their week-end training camps might have caused an increase in the use of common land, but the more recently proposed changes in the role of the Territorial Army may necessitate a reconsideration of the training requirements. The need for land for training, however, continues, though the accent may change from small commons to large ones, and from commons near centres of population to those in remoter areas.

8. If a Service Department wishes to use (for more than 28 days in a year or for purposes which might damage the land or interfere with public amenity) common land, which it has not hitherto used, or if it wishes to change the character of the use it is making of common land, the Department must obtain planning clearance for the proposal in accordance with the procedure laid down in White Paper 7278

* The Department's Bye-Laws made under Part II, Section 14 (i) of the Military Lands Act 1892, cannot adversely affect the Rights of Commoners; but in practice it is for the Commoner by their own Agreement to agree to comply therewith.

(paras. 41-51) and M.T.C.P. Circular 100/50, M.L.G.P. Circular 28/51 and M.H.L.G. Circular 11/54.

In the course of the procedure it has to be established that there is a firm requirement which it is not possible to meet by sharing, with some other Department, facilities which already exist. A site is then sought, the use of which will interfere least with agriculture, forestry, water catchment and public amenity use.

Then consultations are initiated with the Local Planning Authority, Amenity Societies and with other Government Departments. The proposal is then modified to meet objections until, in most cases, agreement is reached and planning clearance given by the Local Planning Authority. In the rare case where agreement cannot be reached, a Public Local Inquiry to consider public interests may with the consent of the Service Department be convened by the M.H.L.G. The Chairman is appointed by M.H.L.G. and reports to that Ministry. M.H.L.G. announce the decision of the Government and state any conditions which may be attached to that decision. A direction may be added that consultation with a Committee of Commoners should take place as to the method of carrying out certain of the provisions. There is no appeal against the decision.

This procedure constitutes an adequate administrative safeguard to ensure that there is a requirement by the Service Department for use of the land and that the site chosen is the least objectionable from the point of view of public interest.

9. To secure that the best use is made of all land, it is better that, where practicable, military training should be carried out on common land which in many cases is less suitable for other purposes, either by reason of its mountainous character or because of the nature of the soil (e.g. the sandy heaths of the Surrey Commons) than that other better land should be used and its use for cultivation either prevented or made wasteful.

10. It would be desirable that any proposed legislation which without further reference to Parliament, would enable changes to be made to any Common which would affect its use for military training should provide for prior agreement with the Service Departments.

11. There is one anomaly in existing legislation, to which the Air Ministry have also drawn attention, which it would be well to remedy from the point of view of both the commoners and the Service Departments. While under the compulsory purchase procedure set out at Appendix 'A', it is possible for a Committee of Commoners to enter into agreement as to the amount of compensation with an acquiring Department, and such agreement is binding on all commoners, no such binding agreement is possible in cases where a Department wishes to enter into a relatively short term agreement with the commoners rather than to extinguish their rights completely. In the present circumstances, the Department must either endeavour to ascertain and to complete an agreement with every single commoner—and this is often impossible—or must enter into an agreement with a non-statutory Committee, elected by agreement, and accept any risk that may arise by reason of the fact that there may be an isolated dissentient to the opinion of the main body of commoners. It would facilitate all temporary uses of common land, and not only the proposals of Defence Departments, if statutory authority were given to Committees elected by the majority vote of the commoners to act in all matters of permitting or licensing a use of common land for a limited period, so as to bind all the commoners.

12. The Admiralty have a purely domestic requirement, which may occur more often in the future, for the acquisition of small sites of common land for the erection of buildings, not for training, but for such purposes as minewatching posts and shore marks and beacons. For these small areas the present process of extinguishing all common rights seems cumbersome. Furthermore there are occasions when temporary, infrequent, and limited use is all that is required. The permanent extinguishing of common rights is not suitable, and a procedure for obtaining a temporary limited waiver of common rights as required would be an advantage.

13. A list is attached at Appendix 'B' setting out areas of common land on which military training takes place. In addition to these areas there are the Metropolitan Commons and open spaces of which the use for military training is permissible under the L.C.C. By-laws (referred to at para. 6 above, but now little used) and many Commons which are used by Regular and Territorial Forces for very occasional training.

Appendix 'A' to War Office Memorandum of Evidence

PROCEDURE UNDER THE DEFENCE ACTS FOR THE EXTINGUISHING OF COMMONABLE RIGHTS

There were no provisions relative to commonable rights in the Defence Act, 1842, but the Defence Act, 1854, empowers the War Department, to use the provisions and powers of Sections 99 to 107 of the Lands Clauses Consolidation Act, 1845, for the purpose of extinguishing and compensating for commonable rights subsisting on land acquired under the Defence Act, 1842. (The Admiralty and Ministry of Supply have similar powers).

The following procedure is complied with:—

- The Department convenes a meeting of the Commoners to be held in the neighbourhood of the Common after full advertisement.
- The meeting should appoint a committee of not more than 5 of their number by a majority decision which, like the acts of the committee, binds absent Commoners and those present but dissenting.
- The Department then negotiates with the committee the amount of compensation to be paid.
- If compensation is disputed, or if no effectual meeting of Commoners takes place, the amount of compensation is determined by the Lands Tribunal in the usual way.
- The compensation agreed or determined is paid to the committee whose task it is to effect distribution amongst those entitled, or, if no committee is acting, into the Bank of England.
- On payment of the compensation the Secretary of State executes a Deed Poll extinguishing the commonable rights.

Appendix 'B' to War Office Memorandum of Evidence

COMMON LAND USED BY SERVICE DEPARTMENTS

(except the Air Ministry)*

NOTE.—Unless otherwise stated the War Department is the user

Locality	Name of Common	Approximate Acreage	Tenure
Trawsfynydd, Merioneth	Trawsfynydd Mountain	3,186½	W.D. purchased freehold in 1905. Compensation is paid to commoners by agreement for sheep losses and interference with normal shepherding.
Fforest Fawr...	Mynydd	2,251	21 year Licences for training in negotiation with the Lord of the Manor and the commoners.
(Brecon Beacons)	Llangattwg		Used under D.R. 52 pending agreements.
"	Cwm Gwdi	776	Agreement has been completed with the Lord of the Manor and with the commoners.

* For Common Land used by the Air Ministry see Appendix A of Air Ministry Memorandum of Evidence.

Locality	Name of Common	Approximate Acreage	Tenure
Sennybridge, Breconshire	Druid's Way	379½	Used under D.R. 52 pending purchase of the freehold and payment of compensation to the commoners.
Bridgend ...	Coity-Walia	3	Used under year to year Licence from the Conservators of the Common.
Caerwys, Flintshire	Moel y Parc	384	Used under D.R. 52 pending the negotiation of Agreements.
Machynlleth, Merioneth	Parc Common	111	Local authority Byelaws permit use for rifle range.
Dowlais, Glamorgan	Merthyr Common	272	Territorial Association hold a tenancy at will.
Cleobury Mortimer, Salop	—	47	Territorial Association hold a 7-year lease.
Aldershot Area	Bramshott Common ...	578	Interest of Lord of the Manor purchased 1918.
Hampshire Commons	" " ...	40	Yearly agreement with the National Trust.
	Broxhead Common ...	174	Interest of Lord of the Manor purchased 1902-3.
	The Slab	613	Interest of Lord of the Manor purchased 1927.
	Kingsley Common		
	The Warren		
	Filmer Common		
	Shorth Heath Common ...		
	Yateley Common ...	324	Interest of Lord of the Manor purchased 1937.
		286	Used under D.R. 52; an agreement with Yateley Parish Council provides for use for one year after D.R. 52 expires.
Surrey Commons	Elstead Common ...	143	Interest of Lord of the Manor purchased 1927.
	Guinea Common ...	11	Interest of Lord of the Manor purchased 1928.
	Horsell Common ...	4	Interest of Lord of the Manor purchased 1921.
	Bisley Common ...	93	Interest of Lord of the Manor purchased 1890.
	Sheets Heath	64	Year to year agreement with Woking U.D.C.
	Whitmoor	471	Year to year agreement with Lord Onslow.
	Crooksbury Common	96	Year to year agreement with Guildford R.D.C.
	Puttenham Common ...	453	Year to year agreement with owner.
	Frensham Common ...	160	Used under a combination of pre-war agreements extended or widened by D.R. 51 or D.R. 52. Terms agreed with owners for 21 year Licence not yet signed.
	Frensham Common ...	376	5-year agreement with National Trust and Hambledon R.D.C.
	Ockley Common ...	270	Agreement with owner for 2 years and thereafter from year to year.
	Chobham Common ...	150	Requisitioned under D.R. 51 and occupied by M. of Supply.
	Hawkley Common ...	420	Used under a combination of pre-war agreements and D.R. 51 and 52. Acquisition of consolidated rights under negotiations with owners.
	Thursley and Ockley Commons	450	
	Horsell Common ...	590	

Locality	Name of Common	Approximate Acreage	Tenure
Dartmoor ...	Belstone Common ...	2,850	Agreements with commoners and Duchy of Cornwall.
	Bridestowe and Sourton Common		
	Okehampton Common		
	Rattlebrook Common	12,800	As above.
	Forest of Dartmoor ...		
	Rattlebrook Common	300	As above.
	Forest of Dartmoor ...	100	
	Peteravy Common ...	1,350	As above.
	Forest of Dartmoor ...	5,100	
	Forest of Dartmoor ...	2,250	As above.
Norwich ...	Plaster Down	70	
	Whitchurch Common		Used under D.R. 51 agreements with Lord of the Manor and commoners under negotiation.
	Ringmoor Common ...	4,400	Agreements with owner, commoners and others for use by Admiralty under negotiation.
	Roborough Common	740	Agreements with owner and commoners for use by Admiralty under negotiation.
	Woodbury Common ...	3,000	Used by Admiralty under D.R. 51 and 52 pending negotiation with commoners and the Lord of the Manor for future tenure.
Weybourne, Norfolk	Mousehold Heath ...	164	21-year Licences from the City of Norwich and the Conservator of Mousehold Heath.
Thetford, Norfolk	Salthouse Heath ...	468	Year to year Licences from Trustees, and Erpingham R.D.C.
	Kelling Heath		
Fakenham, Norfolk	Muckleburgh Hill		
Berkhamsted, Essex	Barnham Cross	200	Agreement with Corporation of Thetford.
	Common		
Ashdown Forest, Sussex	Syderstone Common...	150	Agreement with Syderstone Parish Council.
Felixstowe, Suffolk	Berkhamsted Common	55	Agreement with National Trust.
	Danbury Common ...	150	As above.
London ...	Ashdown Forest ...	5,300	Ashdown Forest Act, 1949, gives the Department rights of training on foot with no digging, wiring or firing live ammunition.
	Landguard Common...	190	Interest of Lord of the Manor purchased 1876.
	Wimbledon and Putney Commons.	1,090	Wimbledon and Putney Commons Act, 1879, provided that any Byelaw prohibiting military drill, a review or encampment must be sanctioned by the Secretary of State for War.
	Plumstead Common ...	40	Plumstead Common Act, 1878, makes similar provision.
Fylingdales, Yorks. (E. Riding)	Wormwood Scrubs ...	193	Wormwood Scrubs Act, 1879, vests the common, purchased by the W.D. in 1874-5, in the L.C.C. in trust to enable the land to be used for military purposes, and subject thereto, for use by the inhabitants of the Metropolis for exercise and recreation.
	Stony Marl Moor, High Moor and Brow Moor, part of the Waste of Manor of Whitby.	6,911	21-year Licence from Lady of the Manor and Court Leet.

Locality	Name of Common	Approximate Acreage	Tenure
Flyingdales Yorks (E. Riding) — <i>contd.</i>	Widow Howe Moor, Manor of Goathland	2,132	Interest of the Lord of the Manor purchased 1952. Agreements with commoners under negotiation.
	Allerston and Ebberston Moors, Crosscliffe	3,894	Acquisition and agreements with commoners under negotiation.
	Wykeham High Moor, Langdale End	3,030	
	Sleights Moor ...	685	
	Ugglebarnby Moor ...	243	21-year Licence from Lord of the Manor and commoners under negotiation.
Barnard Castle	Cotherstone Moor ...	2,685	Used under D.R. 51. The acquisition of long term rights under consideration.
Ilkley ...	Hawkesworth Moor ...	526	Used under D.R. 51. Future use of range under consideration.
Warcop ...	Warcop Fell ...	4,219	Interest of Lord of the Manor acquired in 1955. Negotiations with commoners in hand.
	Stainmore Common ...	450	Used under D.R. 51 and D.R. 52. Agreements with or purchases from owners, and agreements with commoners, under negotiation.
	Hilton Fell ...	3,640	
	Morton Fell ...	1,633	
	Dufton Fell ...	415	

Memorandum of Evidence submitted by the Air Ministry

USE OF COMMON LAND FOR R.A.F. PURPOSES

1. The Air Ministry tries to avoid using common land for Royal Air Force purposes, but this has sometimes been unavoidable in the past and from time to time as new defence requirements arise.

2. Where a large area of common land has to be permanently acquired, e.g. because it forms part of an airfield, the Air Ministry normally uses its powers under the Defence Acts to purchase the freehold and extinguishes the common rights under the procedure laid down in the Lands Clauses Consolidation Act, 1845. This requires a meeting of the commoners to be convened, after advertisement, and the appointment of a committee to agree the amount of compensation, upon payment of which the rights become extinguished. The committee has then to apply the compensation money in accordance with the statutory provisions, after payment of expenses.

3. Common land is sometimes needed for such purposes as the erection of a radio station or a Royal Observer Corps post, i.e. purposes involving a very small area—barely an acre in the first case and a few square yards in the second. In these cases, commoners' rights and public access (in so far as this may be affected) can be overridden by the use of requisitioning powers. This is objectionable in peacetime, though it is sometimes unavoidable, and in any case these powers are not expected to be available for much longer. But to use the procedure of purchase and extinguishing described in paragraph 2 has these disadvantages:—

- Purchase may be unnecessary because the Air Ministry may be able to foresee a term to the particular defence requirement and thus would prefer, if it were possible, to take a lease for a relatively short period. As it is, purchase, coupled with extinguishing of rights, is the only way to obtain possession, which means that the common rights are in effect permanently alienated.
- The procedure for extinguishing common rights is lengthy and expensive and much of the compensation, particularly when the area is small, is swallowed up by expenses.

4. It seems to the Air Ministry that it would be advantageous to the interests concerned if it were possible for such small areas of common land as have been referred to, to be leased. Secondly, in so far as the extinguishing or temporary shelving of common rights, particularly on small areas of land, may be necessary, a simpler machinery should be devised.

Appendix 'A' to Air Ministry Memorandum of Evidence COMMON LAND HELD BY AIR MINISTRY

Locality	Name of Common	Approximate Acreage	Tenure
Greenham Common, Berkshire	Crookham Common	407	Purchased—Common rights and rights of access will be extinguished over part used for service purposes.
	Greenham Common	634	Requisitioned — purchase being arranged. Common rights and rights of access will be extinguished after acquisition. NOTE.—It is doubtful whether any rights of common have been exercised over these two commons for many years.
Titchwell, Norfolk	Thornham Common ...	406	Requisitioned—will be derequisitioned shortly.
Martlesham Heath, Suffolk	Martlesham Common	40	Held on lease and subject to certain agreements with the Commoners.
Bowes Moor, Yorkshire	Bowes Moor ...	92	Requisitioned
Riccall, Yorkshire	Skipwith Common ...	89	Requisitioned
Lands End, Cornwall	Woon Cumpas Common	2	Requisitioned
Metfield, East Suffolk	Metfield Common ...	10	Requisitioned
Woodbridge, Suffolk	Sutton Common ...	300	Requisitioned
Clee Hill, Shropshire	Clee Hill ...	65	Requisitioned
Collier Law, Durham	Stanhope Common ...	1½	Requisitioned
Sopley, Hants.	New Forest ...	2 small sites totalling 2½	Held under agreement with Verderers.
Beaulieu Valley (Trewan Sands)	New Forest ...	1,000	Held under agreement with Verderers.
	Towyn Trewan ...	125	The whole of the area owned by the Lord of the Manor was purchased at his request. Question of extinguishment of common rights over an area of approximately 38 acres is under discussion with the Conservators.
Lakenheath, Suffolk	Lakenheath Warren ...	1,060	Purchased—action in train to extinguish rights when a final purchase of land not believed to be subject to common rights is completed.

In addition there are several R.O.C. posts involving very small areas. No attempt has been made to extinguish the common rights as the future of these sites is uncertain.

Examination of Witnesses

Mr. H. H. HOBBS, C.B. and Mr. L. V. SUMNER on behalf of the War Office.

Mr. T. C. G. JAMES and Mr. C. E. R. HAYWARD on behalf of the Air Ministry and Mr. A. F. COOPER on behalf of the Ministry of Supply.

Called and Examined.

2119. *Chairman*: We are very grateful to the departments for supplying their memoranda. I think it would be convenient to take first the memorandum by the War Office, Admiralty and Ministry of Supply.—*Professor Stamp*: Paragraph 1 of the memorandum says that common land is used for training purposes by the War Department (some 75,000 acres) and by the Admiralty (8,000 acres). In its memorandum the Air Ministry tells us that it tries to avoid using common land for Royal Air Force purposes. Are those two statements at variance? The War Office does not seem to mind using 75,000 acres.—*(Mr. Hobbs)*: We are obviously not so clever at stating our case as the Air Ministry. Our attitude is precisely the same.

2120. *Mr. Lubbock*: Is the fundamental difference that the War Department is using these 75,000 acres for training?—*Mr. James*: That is the distinction. There is a difference in user. The Air Ministry's hunger for land is, unfortunately, usually satisfied only by good agricultural land. We do not have the same type of training problem. Very largely when we do use or acquire common land it is for purposes which are virtually or wholly exclusive of any other user.

2121. *Chairman*: Do you acquire the land compulsorily, or do you requisition it?—Before the war the amount of common land held for Royal Air Force purposes was virtually nil. It amounted to about one airfield. During the war when all reasonably sized pieces of flat land had to be exploited for airfields, we did indeed use a fair amount, the peak being round about six or seven thousand acres, I think. By far the greater part of those war time acquisitions or occupations were by means of requisitioning powers.

2122. *Professor Stamp*: Why has the Air Ministry avoided the use of common land? Is it the difficulty of requisition or its altruistic view of common land?—I think the beginning of our avoidance of common land—and out of the present Air Ministry estate barely 2 per

cent. is common land—is really traceable to physical difficulties of two kinds. First, the need of the Royal Air Force for airfields has been primarily in the eastern half of the country where, for historical reasons, there is not as much common land as in the west, and secondly, while there are flat commons, common land is on the whole rather broken and presents a difficult engineering job to prepare as an airfield. I do not think we can claim any special tenderness towards commoners.

2123. Are the Air Ministry landing fields in Surrey such as Blackbushe, on common land?—Blackbushe is not now part of the R.A.F. estate. It originated historically as a military airfield, but it is now a civil airfield. I think the only military airfield on common land in that part of the world is a somewhat outmoded one at Kenley.

2124. *Mrs. Paton*: You said during the peak period of the war six to seven thousand acres of common land were held by the Air Ministry. What is the position now?—Between four and five thousand acres is the figure now. We will, if you would like it, provide you with an itemised list of our common land holdings.*

2125. *Chairman*: I think it would be very helpful because we could place it with the lists which the other departments have already supplied.—*Mr. Hayward*: May I add something to the answer given to Professor Stamp's question about whether the Royal Air Force deliberately kept off commons? I think it would be true to say that in respect of the very small sites we are now having for the Royal Observer Corps, we have kept off commons because it is so difficult to take what we want. The airfield sites were taken during the war when we had requisitioning powers. We had no option then but to take a particular site because it was flat and because of its location, and so on.

2126. *Professor Stamp*: Does that mean because the procedure is easier you

* This has since been submitted and is reproduced as Appendix "A" to the memorandum of evidence of the Air Ministry.

may take first class agricultural land rather than common land?—I think that is true in respect of the very small sites of half an acre or so.

2127. *Chairman*: What is the difficulty with commons? Do you not have the necessary powers under the Defence Act?—We can acquire the ownership of the common under the Defence Act; but we then have to find out who the commoners are and extinguish their rights under the Lands Clauses Consolidation Acts.

2128. *Professor Stamp*: Do you extinguish the common rights by payment of compensation to the commoners who claim them?—Yes, but in the case of one or two commons we are in a difficulty. We do not know who the commoners or the lord of the manor are.

2129. The schedule of common land used by the defence departments, in many cases states that the interest of the lord of the manor was purchased in 1927, 1928 and so on. What do you actually purchase when you purchase the interest of the lord of the manor?—

Mr. Hobbs: What we mean is that in those cases we have either wholly or partially acquired the freehold of the property of which the lord of the manor was the freeholder.

2130. This is a matter which has been the subject of considerable discussion, namely does the acquisition of the freehold at the same time imply the acquisition of title of the lord of the manor or does that still remain with the former lord of the manor as a title? Do you take over any papers there may be relative to the lordship of the manor?—

Mr. Sumner: Normally we either acquire the freehold of the land by itself or, in certain cases, the actual lordship of the manor as well.

2131. *Mrs. Paton*: Do you then acquire all the documents concerned?—Yes.

2132. *Professor Stamp*: Those documents are very valuable. They have a market value and must not I believe be exported from this country. Does the War Office hold the papers in its archives?—They are kept at the Public Record Office.

2133. *Chairman*: Do you buy out the rights of the commoners when you find them?—*Mr. Hobbs*: That depends on the occasion. If it is possible we let the commoners continue to exercise their

rights. If the rights have to be given up we have to pay compensation for them.

2134. *Dr. Hoskins*: When you buy them out, on what basis do you calculate compensation?—On the value of the rights that have been taken away from the commoners calculated as best we can, bearing in mind what numbers of cattle, for instance, are involved.

2135. Do you calculate the annual value of the pasture rights and then assess them at so many years' purchase? Is that approximately the method?—That approximately is the method. The initial investigation would be done locally by the Command Land Agent in each Army Command, and the assessment made by the Chief Land Agent and Valuer at the War Office.

2136. *Professor Stamp*: Is there a right of appeal by commoners against the amount of compensation that may be fixed?—The amount is fixed by negotiation, but if negotiation fails the commoners have a right of appeal to the Lands Tribunal.

2137. *Dr. Hoskins*: Has it proved difficult to arrive at agreement on the amount?—*Mr. Sumner*: The outstanding case was at Sennybridge wherein the common rights were extinguished just after the war. The statutory assistance of the Ministry of Agriculture was invoked to apportion the compensation.

2138. Was there a wide difference of opinion about the amount of the compensation?—There was a difference of opinion, I believe mainly on the allocation of the compensation rather than on the total amount.

2139. Would you say that in general purchase of common rights has not presented difficulties? Is it just the exceptional case which does?—*Mr. Hobbs*: That is correct.—*Mr. Sumner*: Because we have bought them out in relatively few cases.

2140. *Mr. Floyd*: How are the common rights ascertained, especially in cases where they are not exercised in normal times?—*Mr. Hobbs*: When we are extinguishing rights under the Lands Clauses Consolidation Act, 1845, we have an arrangement whereby a committee is set up to act on behalf of all the commoners, and we proceed by agreement with that committee. In the case where we do not extinguish the rights, but come to some form of accommodation with

the commoners, we have to ascertain as best we can who the commoners are and work on that basis.

2141. *Sir George Pepler*: I think the procedure for extinguishing common rights is referred to in your Appendix A. Do you not first convene a meeting?—We post a notice saying that a meeting will be called. Then at the meeting a committee is appointed, as sub-paragraph (b) of the Appendix goes on to say, and we then proceed to work with that committee.

2142. I gather from (c) that if there is no committee then you pay the money into the Bank of England?—Yes. We do not make a profit.

2143. *Mr. Floyd*: When you have a committee to deal with is the onus on the committee to find out who are the commoners?—That is not quite our attitude towards it. If we can help the committee we do.

2144. *Sir George Pepler*: But under the statute are not the committee responsible for finding out who the commoners are?—The onus is upon them and not upon the War Department.

2145. *Dr. Hoskins*: Do they work with a time bar, so many weeks or months being allowed for ascertaining who the commoners are?—Where we are dealing under statute with the extinguishment of rights that would be a matter entirely for the committee. We should pay over the money to the account of the committee and it would be for them at their leisure to settle its distribution amongst themselves.

2146. Would you then know if a commoner turned up at a very late date and protested about the arrangement?—We would not know. Where we make arrangements for compensation not under statute it has not been our general experience to find people turning up late.

2147. *Professor Alun Roberts*: Is the value of the rights assessed as a single figure for the purposes of compensation?—*Mr. Sumner*: Yes, but in assessing the value, regard would be had to the nature of the rights of common claimed by the individuals, because not all commons are subject to the same rights.

2148. *Sir George Pepler*: I imagine, for example, someone who farms nearby would claim that his right is more valuable to him than that of a man who farms a good way off the common.

Would the committee settle that?—*Mr. Hobbs*: Yes.

2149. *Chairman*: On paragraph 4, what do the War Departments do in other countries where there is no common land? Do they not have military training?—That is a very pertinent point. A good deal of our own Air Force and Army training is done in Germany. There are large open places such as Lüneburg Heath. Without undue difficulty we can carry out training on a very large scale there such as is not possible in this country at all.

2150. Are those places waste land?—They are largely waste land used by the German Army before the war for the same kind of purpose. When we entered as an occupying force we took them over from the German Army as an asset.

2151. *Mr. Arnold-Baker*: What happens in Scotland where, I think, there is no common land at all?—In Scotland there is a lot of land of a comparable nature to commons in England and Wales. There are many natural obstacles and a good deal of it is of no value for military training at all.

2152. *Professor Stamp*: We have had evidence of a rather special difficulty caused by temporary requirements for territorial training when land is perhaps needed for only a few days in the year. The Nature Conservancy say they find it difficult to refuse permission for the use of a nature reserve when there seems to be a strong demand to use it for training. Can you say anything about that?—Personally I have not heard of that difficulty.—*Mr. Sumner*: I have not heard of it, either. It may partly be because planning permission is not normally necessary for any user of that kind of less than 28 days' duration per year, but I think that normally the local military authorities avoid that type of place as far as possible. I find it difficult to envisage them pressing for the use of a nature reserve for a temporary T.A. camp.

2153. Does that mean that for temporary purposes the armed forces can go on to common land without any special permission?—*Mr. Hobbs*: We do not use common land except for odd occasions, other than those set out in the schedule at Appendix B. Those odd occasions are very often of a very minor character as in the case of a combined cadet force of a couple of hundred boys

who rush round common land for one or two afternoons a year and that sort of thing. I do not think that causes any trouble.

2154. The Nature Conservancy express a different view in their printed evidence, where they say:

'The problem of training the armed forces, including week-end Territorials, also needs to be realistically faced. Many commanding officers appear to be counting upon facilities which are increasingly difficult to grant without serious embarrassment, for example, on Nature Reserves, but which clearly must be available somewhere if the defence of the country is not to suffer.'

—I can only say that the problem must be a local one in so far as it does not seem to have affected our consideration in the War Office at all. I have not had an opportunity to study the evidence given to you by the Nature Conservancy, and would like to do so, and submit answers to any points which they have raised concerning the armed forces.*—

* The following statement has since been submitted by the War Office:—

USE OF NATURE RESERVES AND OTHER AREAS IN WHICH THE NATURE CONSERVANCY ARE INTERESTED

The established training areas, including those for week-end training, are cleared with all interests, including the Nature Conservancy, before use, and every effort would be made to avoid the use of land forming part of a Nature Reserve or a site of scientific interest.

In addition to the use of established training areas, occasions arise when units wish to use land for short periods and, in the past, this has been arranged by Commanding Officers of units. Under current instructions, such use is arranged by the War Department Command Land Agent or his local representative, who consults the owner and the occupier of the land, and any other known interest, and obtains consent before military use is permitted.

Much of the land involved is uncultivated, and, as a consequence, there are a few occasions when military use of an area in which the Nature Conservancy are interested might be desired. In such a case, the Nature Conservancy is consulted either locally or by the War Office, and usually the military use is of such a minor character as not to give rise to a refusal by the Nature Conservancy. So far as is known an amicable solution has been reached in all cases, as is shown by the example given in the Nature Conservancy's printed evidence, in respect of Buxton Heath, Norfolk (Mins. of Evidence No. 14, page 472) where it has been agreed to cease the occasional military use to which the land was, for many years, subject.

Mr. Sumner: There may be some confusion in view of what the Nature Conservancy say, between week-end training centres as such, and the temporary training which is carried out occasionally on summer week-ends by the Territorial Army. The week-end training centres as such are permanent training areas. They are deliberately located in sites chosen after full planning consideration with all the interested parties. It might be those areas to which the Nature Conservancy is particularly referring.

2155. *Chairman:* What is meant by the Note in paragraph 5 that 'in practice it is for the commoners by their own agreement to agree to comply with the department's bye-laws'?—*Mr. Hobbs:* We cannot in any sense extinguish their rights under the Military Lands Act, 1892. All we ask them to do is to agree to bye-laws which affect their rights but do not extinguish them.

2156. Do you then pay compensation?—*Yes.*

2157. *Sir George Pepler:* In paragraph 5 you also say you may pay compensation 'pursuant to the Lands Clauses Consolidation Act or (you) may enter into an agreement with the commoners . . .'. Do you have a committee in the latter case?—No, in that case we have no statutory committee at all. We have to deal as best we can on what evidence there is of who the commoners are.

2158. Could an agreement which you have concluded be upset later if you do not know all the commoners?—*Yes.* We are in a difficult position from that point of view. In practice, though, the arrangements we make have a practical effect and we have not suffered any real difficulty.

2159. Have you in fact found the commoners?—All the important ones certainly—all those who are exercising their rights.

2160. *Chairman:* In the second sub-paragraph of paragraph 8 you say 'A site is then sought, the use of which will interfere least with agriculture, forestry, water catchment and public amenity use'. Is the decision taken by the War Department? Do you look at the land and give your view?—*Yes,* but we take all the advice we are given, which is generally a great deal, before the final decision is made. The procedure is that the military, in consultation with the professionally qualified

lands staff, select a suitable site for their purpose. This proposal is then circulated to other Government departments and all local interests, and is modified to meet their objections and suggestions as far as is possible. If agreement cannot be reached, and important matters of public interest are involved, we may decide to hold a public local inquiry which is convened by the Ministry of Housing and Local Government. In such a case, planning clearance is given or withheld by the Minister of Housing and Local Government.

2161. *Mrs. Paton*: Do you not find this takes a very long time?—It does take a long time but we find that if we can achieve agreement by long negotiation it is much better than having to fight various objections from people who have not been properly consulted. In the end that takes longer.—*Mr. Sumner*: It can in some cases be done very quickly. In other cases it takes a long time. It took, I think, six or seven years to get planning clearance for the Surrey commons, but in other cases, not involving common land, planning clearance can be obtained in a couple of months.

2162. *Sir George Pepler*: Supposing I was a local planning authority, and you came to me and said, 'The Ministry of Agriculture and everybody else agree'. I think I should feel I had not got much room to object. Or do the planning authorities really come in a little earlier than that?—*Mr. Hobbs*: They are of course brought informally in the picture before we put a formal proposal to them. Our Command Land Agent is very closely in touch with everybody concerned. That is one of his main duties.

2163. Have you not an arrangement with the Council for the Preservation of Rural England and Wales?—We now approach them direct. We used to do so indirectly.

2164. *Chairman*: Does 'Amenity Societies' in the third sub-paragraph of paragraph 8 mean the C.P.R.E. and C.P.R.W.?—Yes.

2165. At present an application to get rid of common rights, has to be dealt with by provisional order or some procedure of that sort, and consequently you are informed. In paragraph 10 have

you a similar provision in mind should there be changes in future in legislation affecting commons?—What we have in mind, is that where we have an existing use over any particular piece of land it should be possible for us to have our say before anything is done, in order to protect our rights. Similarly, if there were some commons in which we might conceivably have some interest in the future, it would be desirable that we should have some arrangement about them. If later defence requirements pointed towards the use of some other commons we should not be prevented from carrying forward our plans by the existence of some new legislation. We do not want our rights to be abrogated.

2166. I do not think I quite understood that. The present practice is, I think, that in all cases where it is proposed to inclose a common there has either had to be an Act of Parliament, or a provisional order which goes before Parliament, or approval by the Minister of Agriculture. Is not one of the requirements under Parliamentary Standing Orders that so far as the first two are concerned the War Department, and presumably all defence departments, should be informed?—*Mr. Sumner*: I think so.

2167. Do you want something like that, so that whatever action is taken you can be informed?—*Mr. Hobbs*: If we had a major interest we might of course want to take a rather larger part.

2168. But if you had a major interest would you not automatically be one of the people notified?—Yes, indeed.

2169. Are you asking for a general rule that in any case where action was to be taken with regard to a common information would have to go to the defence department?—What we intend is that only where we have a current or immediate future interest would we want to have any particular arrangement. There is a further point. If any such change were made which would make it substantially more difficult for us to operate on that land for defence purposes in the future, there would nevertheless always have to be some kind of provision by which regard could be had to the defence interest.

2170. Would you not have your powers under the Defence Acts?—Yes. I think we are at one in what I am trying to say, namely that any such

action regarding commons should not override the Defence Acts.

2171. *Mr. Floyd*: At present a common might be in a poor condition and if you wanted say, to take your tanks and tracked vehicles where you liked the local commoners might not object. But suppose it was possible to erect a temporary fence on common land to improve a part of it for better grazing. Would it not immediately raise a problem of compensation if you had to take down fences or replace them?—First of all we do not in the ordinary way take vehicles over any part of any common. We should only want that requirement in a very few particular cases when we would come to special arrangements with the commoners. In the normal way it would not happen. In the second place, I think the enclosure of an area would concern us more from the point of view of how far it would limit our use of that particular common. In each particular case we should be faced with a problem of whether the enclosure, large or small, would affect our interest in the use of the common. At that stage we should have to make up our minds how far our use would be affected.

2172. May I ask, when Southern Command have manoeuvres, do they in fact exercise over commons in the south, such as the New Forest?—Since the war, there have been no manoeuvres under peacetime powers.—*Mr. Sumner*: Actually there has only been one case of major manoeuvres. That was in 1951 when we were acting under Defence Regulations which, of course, overrode any other considerations. There was training in the New Forest during the war, when special arrangements were made with the verderers. Since the war, as a result of the New Forest Act, 1949, military training in the New Forest is not practicable.

2173. *Chairman*: On paragraph 11, I believe your point is that when you are acquiring common land compulsorily and permanently you have a committee with whom you can negotiate, but when you are taking land merely for a short period you have to do the whole thing yourself and find out who the commoners are. It is complicated and expensive. Is that right?—*Mr. Hobbs*: That is the point. I might say that in paragraph 11 we are merely supporting the Air Ministry view. We in fact seldom have this kind of problem and from the

War Office point of view it is infrequent and is really no bother to us. From our point of view, though, we would welcome any improved arrangement.—*Mr. James*: This is occasionally quite an aggravating problem for us. Recently we have had a case where, for reasons of radio science, a quite small radio station had to go on some common land in County Durham. We could foresee the time-limit for the use of that station. We certainly did not want to acquire the land permanently but rather to lease it. Because there was a time factor in that case and we were rather worried about the complexity and cumbersome procedure for acquiring the site permanently we did in fact use Defence Regulations, which is a very unpalatable thing to have to do in peace time.

2174. Are you then referring to leases? Do you mean long leases of 10, 20 or 30 years?—Yes, with possibly some temporary waiving of common rights over a small area.

2175. What use will the bit of the common be to the commoners when you have finished with it?—That will depend on the nature of installation that goes on it. For a radio tower, you might need an acre or an acre and a half for the whole site. Not all this would be taken up with the concrete slabs on which the feet rest. Even though one obviously would not go to the extent of grubbing up the concrete slabs at the end of the period, there is no reason why there should not be some use made of the land.

2176. *Mr. Lubbock*: And would the common rights remain whereas in other cases they would be extinguished?—*Mr. Hayward*: Yes. May I give my experience of the New Forest when airfields were laid down. We did in fact take areas outside the runways which were put down to herbage. We grew some very good grass where formerly only very poor grass and gorse grew. So far as any single acre is concerned the chances are that we should to some extent improve it.

2177. *Chairman*: I think we have seen derelict aerodromes not much improved.—I do not say they are all improved but that where heathland has been taken over it certainly has been improved. Unfortunately some of those areas have reverted very quickly.

2178. *Professor Stamp*: Are there considerable areas which have been improved?—Yes, I think there are.

2179. And are any airfields retained on common land on a care and maintenance basis at present?—*Mr. James*: I think I am right in saying that of all our existing holdings of airfields which are on care and maintenance there is only one which is on common land.

2180. *Sir George Pepler*: I notice at the end of paragraph 11 there is a reference to the need for committees elected by the majority vote of the commoners. Were you thinking of a majority of heads?—*Mr. Hobbs*: Yes, simply the counting of heads.

2181. *Chairman*: Does sub-paragraph (b) of paragraph 3 of the Air Ministry's memorandum refer to the case when land is compulsorily acquired?—*Mr. Hayward*: It applies when we are able to acquire the land from the freeholder, generally the lord of the manor, and then have to extinguish the common rights.

2182. The expenses are not your concern, are they? They come after you have paid the compensation to a committee.—The expensive part is after we have paid the committee.

2183. Do they then have to argue who has a claim to the compensation?—Yes. In an actual case where we extinguished the common rights, the compensation paid was about £7,000, plus interest. The portion of the sum that went in costs was £554 10s. 2d., which is rather a lot.

2184. Do the War Office want to extend the procedure by committee to temporary acquisition? Do you want to have a committee so that you could pay them and let them do the rest?—*Mr. Hobbs*: We will go no further than to say that if there are general arrangements whereby a committee of commoners is set up, we would like to take advantage of it; but we do not ourselves press for a body with which to negotiate, because in fact we manage all right with the present arrangements.

2185. *Mr. Floyd*: Does the compensation take into account the expenses in which the commoners may be involved?—No, we pay solely on the basis of the value of the land. If they employ lawyers, then, like the rest of us, they have to pay for them. I think they might quite properly be allowed a certain small amount of expenditure; but I should

have thought if they set about the job together in the right way they would not lay themselves open to any large expenditure.

2186. *Sir George Pepler*: Would most of the work be done by valuers?—I think so.

2187. *Professor Alun Roberts*: If the apportionment of the global award as assessed is open to argument, then it seems to me there is something unsatisfactory in the assessment.—I do not believe that in any of these arrangements—I cannot speak with precise knowledge—our people when fixing the sum do not make it clear to the commoners how the sum is worked out. They would expect us to demonstrate how it is we arrived at sum X rather than sum Y. Therefore they would know what ratiocination was going on behind sum X and would hear that in mind in apportioning X.—*Mr. Hayward*: As I understand it, it is not entirely a matter of apportionment. The common rights are valued as a whole in terms of £X, and then apportioned as between individual commoners; but it is also a question of finding out who is entitled to exercise those rights, and that is where difficulty and expense arise; the question is one of establishing that Mr. A has in fact an entitlement to exercise common rights. Anybody might hob up and say: 'I am a commoner' but he has to prove he is.

2188. People, I suppose, are more bold when it comes to the apportionment of the spoil than when the total figure is being built up? I can understand that.—Yes.

2189. *Chairman*: If a man had rights might he be allowed, say, £100 for them and would he have to prove to the Committee that he had the rights in fact?—*Mr. Hobbs*: In cases which we in the War Office have handled since the war, we have had no reason to believe that all the relevant facts were not available to the committee who were acting. In one case we were ourselves at pains to assist in the ascertainment of who had rights. In the other case, a rather bigger one, at Sennybridge, there were a large number of people who knew all about the matter, and there was no difficulty in finding out who was interested, and the extent of their interests. From the War Office point of view, I do not think we have

met this question to any great extent. We have managed, and I think people have understood what we were about; they might not have entirely agreed, but they have generally accepted what we have done, and the thing has worked.—

Mr. James: In the particular case which the Chief Lands Officer has mentioned—a case in Wales—where the fairly heavy expenses arose in connection with apportionment it was statutorily required that those expenses should be found out of the compensation moneys. And, of course, expenses are not necessarily proportionate to the total compensation.—*Mr. Hayward:* In fact, in taking a small area, the expenses might be out of all proportion compared with those involved in taking over a large common; they probably would be fairly constant.

2190. *Sir George Pepler:* What valuations do you put on the various common rights such as estovers?—*Mr. Hobbs:* I think it is almost entirely grazing rights on which we pay.

2191. *Professor Alun Roberts:* Have all rights other than grazing in fact lapsed?—They have not been established.

2192. *Professor Stamp:* In paragraph 12 the memorandum mentions the Admiralty, saying that 'the Admiralty have a purely domestic requirement, which may occur more often in the future, for the acquisition of small sites . . . In the schedule, the Admiralty are said to share in one of the commons of Dartmoor, and in another case they do not use the common themselves, but it is used by the Royal Marines. Has the Admiralty no other areas of common land, for example, the Lizard Peninsula in Cornwall where, I believe, there was an enormous permanent camp established on what I understood was common land? I find no mention of that in this appendix.—So far as the War Office is concerned, our arrangements with the Admiralty—and that is what we are covering here—enable them to take part in our usage. They normally train their personnel in the same sort of way as we train an ordinary soldier. The Admiralty also has the same kind of problem as the Air Ministry—small markers, small pinpoints, small pieces of land for special purposes, I think the Admiralty felt that our evidence would cover its usage of land for training purposes, and that the Air Ministry's would do so on

the aspect of small pockets for land for specialist needs. I am informed by the Admiralty that there is no record of any naval use of common land in the vicinity of the Lizard and that the common land in Appendix B of our memorandum covers all areas used by them.

2193. I have two general points. The first is that I remember from hearing evidence previously from the War Office that it then put tremendous insistence on the provision of adequate training areas, common land or otherwise, in each of the Commands. Is that still an important point?—Yes. Could I distinguish between two forms of training? First, there is the purely local training which every unit or small formation has to have in its vicinity. Unless it has a certain amount of land on which it can train small hodies of men, it has to be travelling around the whole time, and that would be quite nonsensical. Therefore locally there must always be a certain modicum of land upon which an infantry battalion, for example, can train men. Over and above that there are major training areas which are scattered about the country. We endeavour to get a suitable bit of land, and on that we train people from all Commands who can usefully be trained in that particular area. Those are largish acreages in which tanks are manoeuvred, guns are fired and the firing of small arms under something like battle conditions is carried on. You are right in saying that we require land in each Command, for the first purpose. For the second purpose we endeavour to use land economically on the basis of treating the country as a whole, and we send people to these large areas so as to make maximum use of them.

2194. As regards the second purpose, is the general trend for larger contiguous areas of land to be required, because of the increasing size of tanks, and so on?—That has been so, comparing, for instance, the last century with this. Whether we have now reached the point where the areas needed will not get any larger is very much an open question. If we did not have land that we can use in Germany at the present moment, I am sure there would be pressure from the military staffs to have somewhat bigger acreages in this country where they could exercise a rather larger formation, such as a brigade, than is possible here now.

2195. Take one example, a proportion of the Isle of Purbeck was used during the war; after the war the demand was for the extension of the area on the grounds that larger tracts were needed. Is that sort of trend still going on?—Generally speaking, what we have done since the war is to try to take permanently the small number of large areas for which we foresee a long-term usage for training. Many of them are for large weapons which require big areas. That has meant, of course, that in some places we have had to extend somewhat the amount of land that we have held in the past; but generally the reverse has been true, and where a large area was used during the war, we have taken just the core and satisfied ourselves with that. For instance, at Stanford, which has attained a great deal of notoriety since the war, we were in fact trying to acquire a much smaller area than we used during the war for the same kind of purpose.

2196. There is one other major point. Looking at your Appendix B, the schedule refers very roughly to an area of 80,000 acres. In a large number of the cases mentioned here, has the interest of the lord of the manor been purchased and compensation paid to the commoners, so that a very large proportion of this common land has been virtually inclosed and rendered private or rather War Department property?—No. The 75,000 acres mentioned in Appendix B are quite apart from the acreage which we have purchased and inclosed. We have, over the last 150 years, purchased and inclosed some 31,000 acres of common land. That acreage is not included in Appendix B.

2197. Although you have acquired the freehold rights so far as the land in Appendix B is concerned, has the land concerned not been inclosed and War Department notices put up?—You will find that over large parts of it notices have been put up, making it clear that during certain hours, when firing is taking place, access cannot be permitted. That is true of some 60,000 out of the 75,000 acres. Over the remaining 15,000 acres you would not see a notice or red flag; there is no firing over them and there should be no question of commoners or anybody else being prevented from entering upon that land at any time.

2198. Is there then in fact limited public access over the 60,000 acres?—Yes and commoners enjoy their rights, so far as we can enable them to do so; grazing takes place to a very considerable extent. I should perhaps say that we have given some compensation for the abatement of access; even in cases where we have purchased the freehold, we have permitted public access to continue, although we have been under no duty to do so. That applies to 13,000 acres of the land we own, some 5,000 acres of which was never common land in any sense. On this land we allow public access unaffected except when firing is in progress. We have, I think, tried to give some *quid pro quo*, although we have prevented access to a certain number of acres.

2199. Has the War Department then in some cases given a legal right of access which they are not obliged to give by law?—I think that is true.

2200. *Professor Alun Roberts*: Could you withdraw that free access?—I do not think we have thought of that. It applies to places like Salisbury Plain, where access by the public is permitted over some 2,000 acres. We would not distinguish between land on which there have been rights of common, and other land.

2201. If circumstances arose in the Command that made you withdraw that gratuitous permission, could you legally enforce the withdrawal?—I can only assume that it would happen in time of stress, when we should have extraordinary powers. On other occasions we might need to do it, although I do not think it at all likely, and I think then we should probably find that we were able to do so.

2202. *Professor Stamp*: Has the War Office any legal obligation to the public in such a case if they should be injured by live ammunition?—Wherever there is a danger from live ammunition we normally prohibit public access. Where we have searched the area and made sure it is safe, so far as we can—and we are always fallible in this, as we know from these unfortunate accidents that do occur—there should be no live ammunition and therefore no danger.

2203. In Savernake Forest the notices are still there: 'Danger of live ammunition'.—We had very considerable holdings of ammunition located

there during the war. After ammunition has been removed there is always the chance that under some undergrowth or in some other place there may be live rounds left. We have, of course, to sweep and clean ammunition dumps, and that takes time and trouble.

2204. One final point on the very last sentence of all in your memorandum, paragraph 13: you say: 'And many commons which are used by Regular and Territorial forces for very occasional training.' Does that mean for up to 28 days a year?—It can mean that. In practice it means very rarely. I gather from previous evidence given here there are some two million acres of common land. We only use some 4 per cent. of the total as shown in Appendix B. This occasional use must be a very slight percentage of our total use.

2205. *Chairman*: On such commons what powers have you? Can you put up fences and so forth?—Where we have acquired the freehold we can extinguish the common rights and then inclose.

2206. That is when you have extinguished the common rights. While you allow them to remain could you put up fences when you wished to do so?—Not in so far as we have not extinguished and rights. If there is part of a common over which rights have been extinguished we should of course put up a fence there if we needed to do so; but where we allow the rights to continue we should pay compensation in so far as we diminished their value. In the normal way this would not come about by our setting up a fence, but by forbidding access over some area over a period of, say, two days a week.

2207. What is the legal position? Are you in fact obliged to seek permission from the Minister of Agriculture to put up a fence?—We do not inclose land unless we purchase the freehold, when we would extinguish the common rights. In those cases we probably do inclose the land.

2208. *Mr. Floyd*: On Appendix B, does anybody exercise common rights on any of the Surrey commons, Elstead Common, Guinea Common, Horsell Common, and Bisley Common?—*Mr. Sumner*: Hardly at all. They have virtually become annexed to Metropolitan London for amenity purposes;

common rights are not, so far as we know, exercised at all.

2209. They would not be very valuable because of the danger from motor cars and so on; but I wondered if the rights had lapsed for physical reasons, or whether you had extinguished them?—*Mr. Hobbs*: They are not extinguished because of any act of ours.—*Mr. Sumner*: We have not extinguished the rights over the commons shown in the list.

2210. Do you hold exercises over commons in the Dorset area, such as Lulworth?—*Mr. Hobbs*: I do not think there is any question of major usage there, because there are not many army camps in the area. The only army population is around the Lulworth area itself, which is solely concerned with R.A.C. training on Lulworth range. Apart from that the only user would be by the local Territorial Army.

2211. *Dr. Hoskins*: I have one specific question about Schedule B under the heading of Dartmoor. Where in this list, if anywhere, does Plaster Down, near Tavistock, come?—*Mr. Hobbs*: That is not in the list. The Plaster Down case is a special one which is being considered at the present moment. During the war we had a fairly large user there. After the war our user continued and there was the normal public inquiry, and so on.—*Mr. Sumner*: The public inquiry did not specifically cover Plaster Down. Plaster Down, as we know it, is a camp site with some 70 acres held on requisition, whose future is still not absolutely settled. When its future is settled we should propose to deal with Plaster Down in the same way as we have dealt with our occupation of most of the common land in Devonshire, possibly by the acquisition of the lord of the manor's rights and freehold, but in any event by negotiation and agreement with the commoners.

2212. When you talk about the future not being settled, do you want to turn a temporary occupation into a permanent one?—That is the proposal which is under examination at the present moment.

2213. Is it meeting with any kind of opposition at this stage?—It has met with some opposition from the Dartmoor Preservation Society and one or two amenity bodies.

2214. Will there be another public inquiry about it?—*Mr. Hobbs*: I do not think it is entirely accurate to say that our user is to be changed from temporary to permanent. Some temporary buildings were put up during the war. Planning clearance was given on the basis that there would be a Territorial Army user of that site of a permanent nature; that is, we fully intended ourselves that when those huts fell to pieces, as they will in the course of time, they should be replaced by permanent accommodation. The difference that has arisen is that it is now proposed that regular troops and not the Territorial Army should occupy the accommodation there. I think the point that has arisen is whether since it is not to be a local Territorial, but a regular army user, the War Office has the proper clearance. Our own view is that, having got agreement to the use of that site for long-term purposes it is irrelevant whether it is for the Regular Army or the Territorial Army.—*Mr. Sumner*: The normal planning clearance was given by the Ministry of Housing and Local Government.

2215. What is the ground of the objection of the Dartmoor Preservation Society? Is it purely amenity, or are there commoners' rights involved?—*Mr. Hobbs*: There is the usual objection which everybody meets on Dartmoor. We have been having difficulties there since 1875. We are well cognisant of these objections. As you know they are amenity objections, representing the views of those who form themselves into various associations concerned with Dartmoor.

2216. Do you anticipate any particular difficulty with common rights when the question comes to be discussed?—Our experience in that part of the world is that it is more objection to having us there at all, rather than the question of assessing the value of common rights which is the problem.

2217. *Sir George Pepler*: Has the Plaster Down case not been put in the list at Appendix B?—No.—*Mr. Sumner*: It is broadly covered by one of the acreages given under the Forest of Dartmoor. We did not mention the site specifically because the area is so small in relation to the picture as a whole.

2218. *Dr. Hoskins*: I agree it is a small area, but I would question whether

it is covered by the Forest of Dartmoor figure, because it is not in the Forest.—*Mr. Hobbs*: Could we check on that? If we have given you an incomplete list, we will make it complete.

2219. *Professor Stamp*: Have the Defence Ministries given up considerable tracts of common land which they used temporarily during the war?—Yes.

2220. What has been done with regard to any buildings which they may have erected for war time purposes?—The general Government policy has been followed in those cases, namely, not to attempt to make a physical restoration of the site. A payment is offered by the Government Department concerned—the War Office, for instance—and that payment is related to the cost of reinstating the ground, limited always of course to the intrinsic value of the land itself: we should not pay any sum which would enable the existing value of the land plus the compensation to exceed what would have been a proper valuation of the land if it had not been disturbed at all.

2221. Does that account for a lot of areas with derelict buildings which still clutter up the countryside?—As I say, under Government policy we do not accept any duty to restore them. We just pay compensation. In cases where there is a good reason for physical restoration there are arrangements whereby the Ministry of Housing and Local Government can pay additional grants which would make it possible—assuming our grants did not—to carry out reasonable restoration.

2222. In the case of buildings would compensation be paid to the lord of the manor, and is he under any obligation to use it for the removal of them?—We should, of course, remove from buildings anything of value. All that remained would be the question whether to remove the non-valuable portion. That would be for the lord of the manor to consider. We take it that he, being the owner of the freehold, is the proper person to agree with the users of the land as to what restoration of the land is possible and desirable.—*Mr. Hayward*: I should add from the Royal Air Force point of view that we had a certain amount of common land on requisition during the war, but, apart from two cases in the New Forest, the remaining ones were not very difficult from the point of view of restoration; they

were not very large. In the case of the two areas in the New Forest, we had them in fact restored ourselves, instead of paying compensation. We did this through the agency of the Forestry Commission, who administer the New Forest, and they did the work themselves, breaking up buildings and foundations; but we left the main runways and tracks, which were too expensive to take up.

2223. *Chairman*: Also related to the question of restoring common land to its former use when it is no longer required for defence purposes, we have had evi-

dence to the effect that common rights may be abolished by law but not recreated, and that a change in the law would be required to enable them to be recreated. Do the Defence Departments agree that is so?—*Mr. Sumner*: We are advised that the statement to which you refer is incorrect in point of law, and that, in general, rights of common (except rights of common appendant) can still be created by grant or prescription.

Chairman: Thank you very much indeed. I am grateful to you for having come along to give evidence.

(The witnesses withdrew)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

17

Thursday, 1st November, 1956

WITNESSES

The Royal Institution of Chartered Surveyors



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List of Witnesses

THURSDAY, 1st NOVEMBER, 1956

MR. R. C. WALMSLEY, F.R.I.C.S., F.L.A.S.

Member of Council, and Honorary Secretary of the Agriculture and Forestry Committee.

MR. E. H. FLEMING SMITH, T.D., F.R.I.C.S., F.L.A.S.

Member of the Agriculture and Forestry Committee.

MR. T. R. TILL, F.R.I.C.S., F.A.I.

Member of the Agriculture and Forestry Committee.

MISS E. M. RUTLAND

First Assistant Secretary.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 1st November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MRS. F. B. PATON, J.P.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence submitted by the Royal Institution of Chartered Surveyors

I. Introduction

1. The Royal Institution of Chartered Surveyors desires to submit the following Memorandum of Evidence to the Royal Commission on Common Land.

2. The Institution was founded in 1868 and incorporated by Royal Charter in 1881. It is the senior and largest society concerned with the profession of the land. The surveyor's profession is defined in the Royal Charter as:—

‘the art of determining the value of all descriptions of landed, mineral and house property, and of the various interests therein; the practice of managing and developing estates; the science of measuring and delineating the physical features of the earth, and of measuring and estimating artificers' work.’

3. There are 13,831 fully qualified members of the Institution (exclusive of Students and Probationers) practising in the British Isles and overseas. Within that membership, there is organised a separate Agricultural Division, comprising members in private practice, who act on behalf of landlords and tenants, and also members in the Public Service, both central and local. Of the total membership of the Institution approximately sixty per cent. are in private practice and forty per cent. in the Public Service.

4. It may perhaps be of interest to mention that, in 1844, Mr. Henry Crawler, a land surveyor and land agent practising in Hertfordshire, Kent, Essex, Warwickshire, Buckinghamshire, Bedfordshire and Lincolnshire, gave evidence before the Select Committee on Commons Inclosure on behalf of seventeen members of the Land Surveyors' Club. The Club was the forerunner of this Institution, one of its members, Mr. John Clutton, becoming the first President of the Institution in 1868.

5. It may also be of interest to note how closely the present-day problems in respect of common land resemble those before the 1844 Select Committee on Commons Inclosure. Extracts from four of the resolutions of that Committee read:—

‘that it appears, by the evidence of competent and experienced Witnesses, that a large portion of the Waste Land of the Kingdom is capable of profitable cultivation, or of other improvement’;

'that these Lands, as now used or cultivated, are comparatively unproductive . . .';

'that the expense of procuring and carrying into effect Private or Local Acts of Parliament for the Inclosure of Land is so great, as to be, in the case of Commons of limited extent, a serious impediment to their Inclosure, whilst in the case of Commons of large extent, the uncertainty of an application to Parliament, coupled with that of the amount of the expense attending it, almost equally prevents the parties interested from making such application . . .';

'that the present time is more favourable than any that has preceded it for a general measure of Inclosure; first, because . . .; secondly, because the introduction and application of a more cheap and skilful system of draining, and various artificial manures to Lands of this description, and the increase of agricultural enterprise, afford the prospect of raising them to a high degree of fertility, at a moderate cost . . .';

II. Terms of Reference of the Royal Commission on Common Land

6. The terms of reference of the present Royal Commission on Common Land are:—

'To recommend what changes, if any, are desirable in the law relating to common land in order to promote the benefit of those holding manorial and common rights, the enjoyment of the public, or, where at present little or no use is made of such land, its use for some other desirable purpose.'

7. The Institution understands that members of the Royal Commission will, by the time this memorandum of evidence reaches them, already have visited a number of typical commons in various parts of the country in order to acquire a knowledge at first hand of the practical problems connected with them.

III. The Condition and Uses of Common Land

8. Various figures have been given as the area of common land in England and Wales. Mr. Nugent, Joint Parliamentary Secretary of the Ministry of Agriculture, Fisheries and Food, stated in the House of Commons on 14th May, 1954, that, according to the best figures the Ministry had, there were 2 million acres of common land in England and Wales, of which about half a million were in Wales, mainly, in the latter case, in mountain grazings.

9. While there are many commons which are already well managed by Associations of Commoners, or regulated in the public interest, many more commons exist which have reverted to, or have never been improved from, virtually valueless grazing, some being covered with bracken and some with scrub, but all having the characteristic of inability to carry more than a nominal head of stock, if any. There are also commons which are mismanaged by being overstocked, either by the commoners themselves, or by people having no legal right of common thereon at all. Unmanaged commons are subject to various abuses, such as the tipping of builders' waste and other rubbish, the driving thereon or parking of cars and caravans, and indiscriminate use by gypsies.

10. The agricultural potentialities of much common land, when appropriately managed and freed from the legal impediments which prevent measures being taken for its improvement, were thrown into relief by the results achieved by cultivation during the war period. Then something like 20,000 acres of common land were held under requisition by the Ministry of Agriculture and Fisheries. Of these Mr. Nugent stated, in the same speech to which reference has already been made, about 10,000 acres had been returned to the commoners and the general public. Many of the returned acres were now deteriorating again, although the Ministry had done everything possible to bring the commoners together before handing the land back, in order to make management arrangements with them for their benefit and for the benefit of the land. Earl St. Aldwyn, speaking in the House of Lords on 30th November, 1955, said that the Ministry hoped to purchase 3,000 acres under Section 85 of the Agriculture Act, 1947, but that the purchase of the land had turned out to be highly complicated.

11. The different uses to which common land is (or could usefully be) put, include:—

- (a) *Rough grazing.* Probably about $1\frac{1}{2}$ million acres out of the total of 2 million acres of common land are rough grazing. Much of this acreage could be improved to some extent if adequate measures could be taken.
- (b) *Afforestation.* In respect of some common land the best use in the national interest is, or would be, afforestation.
- (c) *Arable or ley farming.* Other common land is suitable for improved leys and pasturage, or for arable cultivation. Nevertheless, even if the quality of the soil, the geographical position of the land, and other factors would indicate such a use it would still be necessary to weigh against these the public interest, in so far as such agricultural use might conflict with traditional use by the public.
- (d) *Development with buildings.* The best use in some cases for a particular common, or part of it, might well be for the erection of houses, shops or even industrial premises. In the past, housing and other development has often taken place on good quality agricultural land instead of on lower quality land, simply because the former has not been subject to the 'sanctity' of rights of common. The proposals submitted later in this memorandum provide a procedure designed to ensure the best use in the national interest of common land with potentialities for development.
- (e) *Amenity.* There are many commons over which the public have traditionally had the main use, and even if the merits of an alternative use, e.g. agriculture or forestry were apparent, yet the public amenity use might be the appropriate one in the national interest.
- (f) *Village greens, and regulated commons.* Village greens and areas of common land with a predominantly residential environment form a class by themselves, as does also such common land as is already subject to regulation, e.g., Metropolitan commons. It is not intended that such commons should be affected by the proposals put forward later in this memorandum.
- (g) *Use for other purposes.* Other uses besides those already mentioned are possible, e.g., the getting of sand and shingle from certain stretches of seashore.

IV. Legal and practical obstacles to the improved use of Common Land

12. The present complexity of the legislation affecting common land, dating back to the Statute of Merton in 1236, need not be stressed. The procedure under the Inclosure Acts of 1845 to 1882 and under the Commons Act of 1899, both for the regulation or enclosure of such land, is lengthy, cumbersome and costly. Some measure of its deterrent effect is shown by the fact that the last scheme for enclosure under the 1876 Act was in 1918 in Gloucestershire; since then only one having been considered, in Northumberland.*

13. As distinct from the difficulties of securing statutory approval for the permanent enclosure of any particular piece of common land, brief reference may be made to the following obstacles to the improved user of many commons, which follow from the complex legal position:—

- (i) The inability of either the owner of the soil or of the commoners, by the limitations on their respective rights, to enclose the land temporarily, or part of it, for any purpose, whether it be for arable cropping, draining, the sowing of leys for improved pasturage, or for afforestation purposes (A note on the rights of owners of the soil and of commoners appears in Paragraphs V and VI of Annex I to this Memorandum);
- (ii) The legal inability of the commoners to take any action for improving the land should the owner of the soil be absent or unwilling to co-operate;

* Mr. G. R. H. Nugent, Joint Parliamentary Secretary to the Ministry of Agriculture, Fisheries and Food, speaking in the debate in the House of Commons dealing with derelict land on 14th May, 1954.

- (iii) The legal inability to change the user of the land where such change would affect the rights of common thereon ;
- (iv) The lack of incentive to the owner of the soil since he derives little or no benefit from his 'waste land', to take any action to improve it, if the commoners are not prepared to share the expenditure involved ;
- (v) The legal inability to fence any land to prevent cattle straying in the face of oncoming traffic, or to protect T.T. attested cattle ;
- (vi) The legal difficulties involved in the acquisition of common land by the appropriate authorities for some purpose in the national interest.

14. In view of the legal complexities and the results which flow therefrom, the Institution has assumed, throughout its memorandum, that the present problems of common land must be met by a practical approach, and by new legislation of a more direct character which will replace much of the legislation hitherto in force.

V. Need for an up-to-date Register of Rights of Common

15. The last survey of common land took place in 1874. Since then vast changes have taken place throughout the countryside. The break-up of landed estates and the development of industries and towns have proceeded apace, and today one of the major difficulties confronting any attempt to approach the problem of improved user of common land (apart from the complexity of the legal position), is that of knowing exactly what rights exist in any particular common—who are the holders of the manorial rights, and who are the commoners.

16. Not only is there no up-to-date record of those claiming rights of common in any specific area of common land, but on occasions the owners of the manorial rights can no longer be traced. In other cases they are absentee owners. Manorial rights may, for example, be vested in trustees of an estate who have sold all the remaining real property of the former owner. In consequence the trustees have no remaining interest in the neighbourhood and, indeed, may never visit it. In other cases, particularly on the outskirts of towns where most of the land has been developed, the manorial rights may have remained in the hands of the developers, who again have no further interest in the district. Yet the commoners have no power, within the present legal position, to take any action without the owner's co-operation and consent, to improve the value of the common.

17. The basic essential, in the Institution's view, is to obtain an up-to-date Domesday Book of Common Land, together with a record of the owners of manorial rights, and of those claiming rights of common in any particular piece of land, with a précis of the rights claimed (see paragraph 20).

VI. Compilation of the Register

18. To ensure that the whole purpose of the proposed register is not defeated, a time limit must be set to the submission of claims to rights, whether of owners or of commoners. Rights of common not claimed within the specified period, say 3 years, should be regarded as abandoned, and therefore extinguished.

19. All claims should be satisfactorily established before being recorded in the Register of common land. Instances have been met where vendors offering a piece of land for sale have stated that it was not common land, despite which rights of common have been claimed upon it by other persons.

20. Not only is it important to know who are the commoners or classes of commoner claiming rights on any particular common, but also what types of rights are claimed and the legal limitations in each case ; for instance, whether the rights be those of pasture appendant, appurtenant, in gross or by vicinage, rights of estovers or turbary, rights of piscary, or rights of taking gravel or other species of subsoil. The diversity of claims which may be made by various bodies or persons, with some indication of their limitations, is shown in Annex I to this memorandum.

21. Just as there are many commoners who are no longer claiming or making any use of their rights, so there are others (previously referred to in paragraph 9), who are either exceeding their rights of common or assuming rights to which they

have no legal claim. Complaints have been made of the overstocking of fells with sheep, sometimes by people from a distance, with all the attendant ill-effects. The old custom whereby the owner of the soil or his bailiff made an annual round-up of the animals on any particular waste has fallen into disuse, and there is now in some cases no control of any kind over the rights exercised.

22. Clearly in any register, distinction would have to be made between the common which at that date remains unregulated and which may therefore be potentially capable of improvement for agricultural or other purposes, and common land which is already subject to regulation and to which the public have rights of access for air and exercise, e.g., Metropolitan commons and other land comprised within the meaning of Section 193 of the Law of Property Act, 1925. The register should record, in a separate section, the common land subject to regulation.

23. It is assumed that while small areas of common land, for example, village greens, will be noted in the proposed register, in order to ensure a comprehensive record, undue time and money need not be spent upon establishing and detailing the rights of the commoners thereon. As advocated later, such small areas should become the responsibility of the appropriate local authority.

24. The Institution recommends that a time limit be set to the submission of claims to rights, whether of owners of the soil or of commoners; that all rights be satisfactorily established before being recorded in the register; and that rights of common not claimed within a specified period be regarded as abandoned and therefore extinguished. The time limit suggested for the submission of claims is three years.

VII. Appointment of Body of Commissioners for Common Land

25. Consideration has been given to what body or bodies should be made responsible for the compilation of the proposed register of common land, and for certain other functions which are recommended later in this memorandum.

26. In view of the intense local feeling which is normally evoked by discussions relating to any particular piece of common land, the Institution feels that the duty of compiling the register, and later, of making or advising on request in the preparation of schemes for individual commons in certain circumstances (see paragraphs 42-48 below), should be detached from local politics, although the fullest use should be made of localised knowledge and experience (see paragraphs 31-34 below).

27. For somewhat similar reasons, the idea that the County Agricultural Executive Committee might be made responsible for compiling a county register was also rejected. Local feeling and representatives of interests other than agricultural might attribute to the C.A.E.C.s a somewhat natural desire to ensure a purely agricultural use for any particular piece of common land.

28. The Institution accordingly recommends the establishment of an *ad hoc* body of Commissioners for Common Land, whose functions would be strictly defined. During the early stages of their existence, when the Commissioners' main function would be to ensure the compilation of the register of common land, the appointments should be salaried—either on a whole-time or part-time basis—with power given to employ a salaried staff.

29. Whether the Commission should remain as a permanent body after a defined lapse of years would remain to be decided in the light of the results achieved throughout the country by the voluntary schemes for the management or development of commons by owners and/or commoners which we later advocate in this memorandum.

30. The Commissioners for Common Land should have the right and the necessary financial standing to call upon appropriate professional advice at any particular stage of their functions.

VIII. Decentralisation of the Work of the Commissioners for Common Land

31. Although the Institution recommends a central body of Commissioners for Common Land, to avoid the conflicts inherent in any purely local approach to the problem, clearly a central body could not function solely from Whitehall.

32. The work of the Commissioners should therefore be decentralised to county level, and the various Commons Sub-Commissions thus established should include persons with local knowledge.

33. Thus the local approach and accumulated local knowledge and experience could be used to the best advantage while nevertheless retaining an opportunity for the settling of intractable local problems at a higher level, and for maintaining the national point of view.

34. To maintain the necessary unity of general policy a series of Practice Notes, on the analogy of those issued by the War Damage Commission on the administration of the War Damage Act, 1941, might be prepared for the guidance of the Sub-Commissions at county level.

IX. Metropolitan Commons and Village Greens

35. In considering and making proposals for the improved management of common land, the Institution has concentrated rather on the type of common potentially capable of improvement from the agricultural or afforestation point of view, or of other improved user in the national interest.

36. Common land already subject to regulation in the public interest under the Metropolitan Commons Acts, 1866-1898, ss. 193 and 194 of the Law of Property Act, 1925, or any other of the numerous statutes containing provisions for the preservation of the rights of the public, should be exempt from the commons schemes to be initiated by either owner and/or commoners as proposed below.

37. Similarly village greens or areas of common land with a predominantly residential environment, whether urban or rural, should be exempt from the proposals. The preservation and regulation of such areas offering amenity value only should be the responsibility of the appropriate local authority.

38. The Institution recommends that Metropolitan commons, village greens and areas of common land with a predominantly residential environment be exempt from the proposals made in paragraphs 42-48 of this memorandum.

X. Desirability of Local Approach to Improved User

39. Hereditary memory is long and the trail of feeling from past enclosures in the Middle Ages or the eighteenth century still marked. It is, in the Institution's view, essential that everything possible should be done by local action and co-operation between the present owners of the soil and the commoners before any question of compulsion arises.

40. Moreover, the diversity of rights in common land is matched by the diversity in character of the land itself. No general approach can be made to the problem of improved user of common land as a whole. Each individual piece of land must be treated on its merits. Hence the added advantage of ensuring so far as possible a local approach in each case, with all the benefits of local knowledge of potentialities.

41. The Institution recommends that the necessary legal modifications be made to the present statutory position governing common land to allow and encourage action and co-operation at local level 'to promote the benefit of those holding manorial and common rights', as well as 'the enjoyment of the public'; and that no question of compulsion should arise until full opportunity, within the means proposed in paragraphs 42-48 below, has been given to the owners of the soil and to the commoners to co-operate in securing the best use of any particular common.

XI. Commons schemes

42. Turning to common lands appropriate for improved user, and bearing in mind both the desirability of voluntary action at local level and the need for an individual approach to each common, the Institution proposes that when the register for any particular piece of common land is completed, opportunities be given to either the owner of the soil, in consultation with the commoners, or to the commoners themselves, on a two-thirds (in value) majority request, to prepare a commons scheme for the management or development of the land in question. A prescribed limit should be set to the period in which to elect to prepare a scheme and also to the preparation and lodging of the scheme. The Commissioners should be empowered to grant extensions of time in which to lodge a scheme.

43. Failing the preparation of a scheme by either owner and/or commoners, within the time limit as prescribed or extended, the land would remain as at present, with all its existing rights. It should then, however, be available either in whole or in part, as if it were privately-owned land, for compulsory acquisition for any user in the national interest, by any authority with the appropriate powers to acquire. In other words, the land should be available for acquisition for afforestation, agriculture, housing, new roads or any other development in the national interest. Details of the proposed procedure are given in paragraph 54 below.

44. The right to prepare and lodge a scheme by either the owner and/or the commoners, should include the right to develop the land to its best advantage, and should include the right—subject to the scheme being subsequently approved—to envisage either in whole or in part, a change of user, whether for afforestation, arable use, housing or other development. The right should also be accorded to make proposals for fencing, either partially or completely. For example, if part of the land were to be devoted to afforestation, it would be necessary to enclose for a number of years. Similarly, if an improvement to pasture were planned, it might be necessary to fence off the part under ley, or to fence to enable the improved pasturage to be used for attested cattle.

45. The preparation of schemes might include the right to create alternative commons, by exchange or otherwise, where desirable, or alternative footpaths where any question of access by the public at large is involved.

46. This recommended freedom to propose a change of user would provide an incentive to both owner and/or commoners to prepare a scheme and to finance it. Unless some advantage is to accrue to an owner of the soil, he is unlikely to be prepared to participate in a scheme. The same will apply to the commoners in cases where there is no real benefit being derived at present from a particular piece of land. Moreover, the right to develop would tend to obviate any sense of grievance and to allay opposition, so far as owners and commoners are concerned, to the statutory encouragement to prepare a scheme.

47. The Institution recommends that the necessary statutory modifications to existing legislation be made to enable either the owner of the soil and/or the commoners to prepare a scheme for the management or development of any particular piece of common land, the scheme to provide, if desired, for a change of user and to permit of the creation of alternative commons or alternative footpaths for the benefit of the public.

48. Failing the preparation of a commons scheme by either owner and/or commoners, or any request by them for the Commissioners for Common Land to prepare a scheme on their behalf, the land should remain as an unregulated common with its present rights, but should be available for compulsory acquisition for any user in the national interest.

XII. Modification in the national interest of proposed commons schemes

49. To ensure the protection of all interests, both national and local, proposed schemes for the management or development of any particular piece of common land should be subject to a public inquiry before approval.

50. The inquiry would give all interested sections of the community, as well as any owners or commoners who had not previously participated in the preparation of the particular scheme in question, an opportunity of expressing their views.

51. At the same time the appropriate planning authority and any interested Ministry, e.g. the Ministry of Agriculture, Fisheries and Food, the Ministry of Transport or the Ministry of Housing and Local Government, would be afforded an opportunity of stating whether any part of the land covered by the scheme was required within, say, the ensuing 5 or 10 years for compulsory purchase in the national interest.

52. On the approval of a scheme, with or without modifications, and with or without any provision for compulsory purchase, security of tenure under the scheme should be established for a stated period of at least five years. It would not however be appropriate, in the Institution's view, for permanent immunity from disturbance to be granted to any particular piece of common land; and at the close of each five-yearly interval, opportunities should be available, either to the owner and/or the commoners themselves, or to the appropriate authorities, to seek a revision of the scheme. If no revision were sought, the scheme would continue, as originally approved, for a further five years.

53. The Institution recommends that prior to the approval of any scheme for the management or development of a common, a public inquiry be held; that a scheme once approved, be valid for at least five years; but that opportunities for applications to vary a scheme be available at five-yearly intervals.

XIII. Procedure for the preparation of schemes for the management or development of common land

54. The procedure envisaged by the Institution for the preparation of schemes for the management or development of common land is as follows:—

- | | <i>Proposed
Specified
Period.</i> |
|--|--|
| A. Claims to ownership of the soil and to rights of common to be made within a specified period for registration in the Register of common land | 3 years |
| Rights of common not claimed within the period to be extinguished.
Adequate steps to be taken to publicise the intention to prepare a register. | |
| B. Owners of the soil to be required to elect within a prescribed period, whether they desire, in consultation with their commoners, to prepare a scheme for the management or development of any particular piece of common land | 1 year |
| C. Owners notifying the Commissioners for Common Land in the affirmative to prepare and lodge a commons scheme in consultation with the commoners, and with such other interests as may be desirable, should rights of access to the particular common be claimed by the public | 3 years |
| D. Owners notifying the Commissioners for Common Land in the negative, or taking no action to elect to prepare a scheme within the prescribed period at B to be held to have foregone their right to make a scheme although not their rights to the ownership of the soil, or to participate in any subsequent scheme for management or development. | |
| E. In the event of a negative response or where the owner is not available or is unable to take action to prepare a scheme, authority to be granted to the registered commoners—provided two-thirds of them (by value) are in agreement—to prepare a scheme for management or development of the land. Notice of intention to prepare a scheme to be notified to the Commissioners within a prescribed period. | 1 year
subsequent
to the year
allowed to
the owner
to notify his
intentions. |

- F. Preparation of scheme by commoners, in consultation with the owner should the latter desire, and with such local interests as may be deemed to be necessary.
- G. At either stage C or F, the owner or the commoners to be able to seek advice from the Commissioners for Common Land on the preparation of a scheme, or to invite the Commissioners themselves to prepare a scheme, in consultation with the owner and/or commoners.
- H. Public inquiry to be held, with all customary procedure for advertisement in advance, and opportunities to the public and to interested bodies to inspect scheme, and for appropriate authorities to state whether any part of the land is sought for compulsory purchase in the national interest.
- I. Approval or modification of scheme, within a specified time limit, and subsequent action to implement.
Scheme once approved to be valid for at least five years, but to be subject to revision, at the request of either the owner and/or commoners, or of appropriate authorities, at five-yearly intervals.
- J. Should action to implement a scheme which has received approval not be taken within a specified time limit, authority to be granted to the Commissioners for Common Land or to the appropriate Ministry to proceed with the scheme as approved.
- K. Should neither the owner of the soil nor the commoners prepare a commons scheme for management or development, the common to remain as at present, with all the existing rights thereon.

The land to be available, however, as if it were privately-owned land, for compulsory acquisition, either in whole or in part, by any appropriate authority for any purpose in the national interest, e.g., afforestation, agriculture, new roads, or housing.

55. The Institution recommends that the procedure for the preparation of schemes for the management or development of any particular piece of common land be as set out above.

XIV. Finance

56. The implementation of any scheme of improvement or development may be expected to result in an enhanced value of the land. It is envisaged that such enhancement should accrue to, or be divided between, the owner and the commoners. The enhanced value should, in practice, be sufficient to enable payment to be made to extinguish the rights of any commoners who do not participate in the scheme or of a non-participating owner. It might be desirable to prepare a code for the compensation of owners, or commoners in the minority, who did not wish to participate in an approved scheme.

57. Immediate finance may be necessary; for example, for liming, draining, fencing, improvement of leys, or the extinguishment of rights. The question arises whether capital should be made available, either at specially reduced rates of interest or in the form of interest-free loans, repayable over a specified period of years, from the Commissioners for Common Land, or from an appropriate body already in existence, such as the Agricultural Mortgage Corporation.

58. The grants, services and subsidies available to owners and occupiers under the Hill Farming and Livestock Rearing Acts should be equally available to owners and/or commoners for the improvement of marginal common land.

SUMMARY OF RECOMMENDATIONS

1. In view of the legal complexities and the results which stem therefrom, the present problems of common land must be met by a practical approach, and by new legislation of a more direct character to replace much of that hitherto in force. (Paragraph 14.)

2. The basic essential is to obtain an up-to-date register of common land, together with a record of owners of manorial rights, and of those claiming rights of common on any particular piece of land, with a précis of the rights claimed. (Paragraphs 15-17.)

3. A time limit should be set to the submission of claims to rights, whether of owners of the soil or of commoners. The time limit suggested is 3 years. All rights should be satisfactorily established before being recorded in the register, and rights of common not claimed within a specified period should be regarded as abandoned and so extinguished.

Distinction should be made in the register between the common which remains unregulated and which may therefore be capable of improvement or development, and common land already subject to regulation. Distinction should also be made in respect of village greens and areas of common land with a predominantly residential environment. (Paragraphs 18-24.)

4. An *ad hoc* body of Commissioners for Common Land should be appointed, the functions of which would be strictly defined. The duty of the Commissioners, in the first place, would be to ensure the compilation of the register of common land; and later, to undertake various duties outlined in this memorandum.

During the early stages of the Commission's existence the appointments should be salaried, either on a whole-time or part-time basis, and the Commission be empowered to employ a salaried staff. Whether the Commission would remain as a permanent body would be for decision in the light of the results achieved throughout the country by the voluntary schemes for the management or development of common land by owners and/or commoners.

The Commissioners for Common Land should have the right and necessary financial standing to call upon appropriate professional advice. (Paragraphs 25-30.)

5. The work of the Commissioners for Common Land should be decentralised to county level, and the various Commons Sub-Commissions thus established should include persons with local knowledge. Thus the local approach and accumulated local knowledge and experience could be utilised, whilst retaining a channel for the settling of intractable local problems at higher level.

To maintain the necessary unity of general policy a series of 'Practice Notes' might be prepared for the guidance of Sub-Commissions. (Paragraphs 31-34.)

6. Common land already subject to regulation in the public interest under the Metropolitan Commons Acts, 1866-1898, ss. 193 and 194 of the Law of Property Act, 1925, or other statutes making provision for regulation in the interests of the public, should be exempt from the schemes of management or development proposed in Recommendation 8 below. Similarly, village greens or areas of common land with a predominantly residential environment, whether urban or rural, should be exempt. (Paragraphs 35-38.)

7. Legal modifications should be made to the present statutory position governing common land to allow and encourage action and co-operation at local level. No question of compulsion should arise until full opportunity has been given to voluntary action. Such local action will also meet the problem of the great variety in type of common land and of the rights of common thereon, and the consequential need for individual approach in each case. (Paragraphs 39-41.)

8. The statutory modifications envisaged should enable and encourage the owner of the soil and/or the commoners to prepare a scheme for the management or improved user or development of any particular piece of common land, the scheme

to allow of a change of user and to permit of the creation of alternative commons or footpaths. The advice of the Commissioners for Common Land should be available to either owner and/or commoners on request.

Failing the preparation of a scheme by either owner and/or commoners within a prescribed time limit, the common should remain as an 'unregulated' common with its present rights, but should be available for compulsory acquisition, in whole or in part, by any appropriate authority in the national interest. (Paragraphs 42-48.)

9. Prior to the approval of any scheme for the management or development of a common, a public inquiry should be held. A scheme, once approved, should be valid for at least five years; but opportunities for applications to vary a scheme, by either owners and/or commoners, or by public authorities, should be available at five-yearly intervals. (Paragraphs 49-53.)

10. The suggested procedure for the preparation of schemes for the management or development of common land is detailed in Paragraph 54.

11. The implementation of any scheme for the improvement or development of a particular piece of common land may be expected to result in an enhanced value of the land. Such enhancement should accrue to, or be divided between, the owner and the commoners. The enhanced value should, in practice, be sufficient to enable payment to be made to extinguish the rights of any commoners who do not participate in the scheme, or of a non-participating owner.

On the other hand, immediate capital might be necessary. This could be made available either by the provision of money by Parliament to the Commissioners for Common Land, or through an existing body, such as the Agricultural Mortgage Corporation.

The grants, services and subsidies available to owners and occupiers under the Hill Farming and Livestock Rearing Acts should be equally available to owners and/or commoners for the improvement of marginal common land. (Paragraphs 56-58.)

Annex I

COMMON LAND, COMMONERS AND RIGHTS OF COMMON

I. Definition of common land

Common land is land subject to a right of common, the right of common being the right, which one or more persons may have, to take or use some portion of that which another man's soil lawfully produces (Cooke's Inclosure Acts (4th Edition)). Such part of that produce as the commoners do not lawfully take belongs to the owner of the soil. The right is in the nature of a *profit à prendre* and so must be distinguished from an easement, which, although a right over another man's land, confers no right to participation in the produce of that land. Hence land ordinarily known as common may be defined as land, the soil of which belongs to one person, and from which certain other persons take certain profits. In general, no interest in common land is enjoyed by the public or nation at large, except for the rights of access for air and exercise conferred in respect of some commons by modern legislation, e.g., The Law of Property Act, 1925.

The majority of commons were originally 'waste' land of a manor, the lord of the manor being the owner of the soil. But though a manorial common (which may or may not include woodland) is the form in which common land is most usually found, especially in the South of England, there are other forms of 'commonable land', e.g. common fields, common meadows and common pastures. The commonable lands are generally held in severalty during a portion of the year, but become commonable after the severalty crop has been removed, and in many cases during the whole of the year in which they lie fallow.

Their origin bases on the fact that a large part of England originally lay in common fields. In each vill or township there were usually three large fields (or

perhaps two or more sets of such fields) in which the three-crop agricultural rotation was followed—in one wheat, in another barley, the third lying fallow. These fields formed either the whole or the bulk of the arable land of the township. Each field was divided into small strips, separated by strips of turf. The arable strips were owned and tilled in severalty by the owners throughout part of the year, but as soon as the corn was carried the whole field was thrown open to indiscriminate pasturage by all the owners of the strips. In some cases, with the passage of time, and as new inhabitants came into the vill, they were allowed to depasture their cattle on the common fields during the open season, in spite of the fact that they owned no strips. In other cases they were not.

The number of common fields, common meadows and common pastures is now comparatively small, the majority having been enclosed. This form of common land nevertheless still exists. Further details are given in paragraph IV.

Another class of common lands are those which are, or formerly were, Royal Forests. When early monarchs set aside large tracts of country for hunting forests, they expressly reserved to all who had common within the territory such rights of pasturage and other rights as were not inconsistent with the royal purposes. There are therefore certain limitations on rights of common in forests, into which it is unnecessary to enter here.

Generally speaking, rights of common are exercised in common with, but not to the exclusion of the owner of the soil, although this does not necessarily follow, e.g. in the case of rights of sole vesture or sole pasturage (see paragraph III 1. (v) below).

II. Persons and bodies entitled to rights of common

Generally speaking the persons or bodies entitled to rights of common fall under the following headings:—

1. *Persons deriving their land from a manor*

- (a) *Freehold tenants* of the manor were originally feudal tenants owing fealty to the lord of the manor and holding their lands by virtue of military service owed to the lord, or in free socage, i.e. service of the plough. With the break-up of feudalism in the Middle Ages, the services either lapsed or became commuted into money payments.

Under the Copyhold Act, 1894, provision was made for the extinguishment by voluntary agreement between lord and tenant, subject to compensation, of manorial incidents, while under Part VI of the Law of Property Act, 1922, which superseded the relevant sections of the 1894 Act, and which came into effect on 1st January, 1926, provision was made for the extinguishment, within a ten-year period (unless the period was extended in special cases), and subject to compensation, of all manorial incidents payable to the lord. All incidents are therefore now extinguished. The tenants' rights of common were, however, expressly reserved.

Freehold tenements of a manor must date from before the passing of the Statute of Quia Emptores, i.e. 18 Ed. I c. 1. 1289-90.

- (b) *Holders of enfranchised land which was formerly copyhold or held in customary tenure*

Similar provisions were made in respect of copyhold, or land held in customary tenure, under the Copyhold Act, 1894, and subsequently, by the Law of Property Act, 1922, as amended by the 1924 Act, all copyhold land or land held in customary tenure of a manor was enfranchised as from 1st January, 1926. Again, although the manorial incidents were extinguished subject to compensation, the rights of common attaching to the tenures were expressly reserved.

Originally copyhold land was land occupied by the lord's villeins or serfs who tilled his domesne. They were attached to the soil and held their lands, homesteads and strips in the arable common fields at the will of the lord, to whom they owed services in kind, e.g. labour and produce. They held of the manor by copy of court roll.

Gradually their services became commuted into money payments, and it came to be recognised that a copyholder should not be disturbed in the occupation of his land so long as he performed his services, or later, paid them in money.

(c) *Holders of land enfranchised before the passing of the Copyhold Act, 1894*

Land which was formerly held of the manor by copy of court roll may have been enfranchised before 1894 by the lord himself releasing and conveying the soil and freehold. Normally, by the unity of ownership of the manor and of the tenement prior to conveyance, the common rights would thus have been extinguished, but they may have been expressly continued under the deed of enfranchisement.

(d) *Owners of land purchased or otherwise acquired from the lord of the manor since the Statute of Quia Emptores, 1289-1290, to whom an express grant of right of common can be proved or be assumed from long user*

It should be noted that tenants of the lord are not entitled to rights of common unless by express grants in their leases. The lord owns their land and the lord cannot have right of common against himself.

2. *Persons not deriving their land from a manor*

(e) *Owners of land not belonging to a manor who can prove a grant of a right of common*

(i) by production of the grant (very rarely), or

(ii) by prescription, i.e. continuous and uninterrupted user from time immemorial—in legal parlance, from before the beginning of the reign of Richard I. It is unnecessary to prove actual user from 1189. The continuance of a usage for many years in modern times, unless rebutted by other circumstances, is taken as *prima facie* proof of its continued existence from time immemorial. As distinct from claims by prescription at common law, for which no specific period is fixed to prove continuous user, although obviously it must be sufficiently long, claims under the Prescription Act, 1832, must show either thirty or sixty years' continuous and uninterrupted user as of right, according to prescribed conditions in the Act.

(iii) when the history of the land precludes a right from time immemorial, by continuous and uninterrupted user for such a period as will raise the presumption of a lost grant.

(f) *Persons or bodies capable of taking a grant on behalf of a larger number of persons*

Since rights of common cannot normally appertain to fluctuating classes incapable of taking a grant, the rights can be vested in persons or bodies who are so capable, e.g. the mayor and corporation of a borough on behalf of all the burgesses, a parson of a church or similar corporation sole, or a body of trustees for classes of inhabitants, ratepayers, occupiers, etc.

The public at large, apart from the rights of 'access for air and exercise' conferred on them by the Law of Property Act, 1925, in respect of metropolitan and certain other commons, or under such Acts as the National Parks and Access to the Countryside Act, 1949, have no rights of common.

III. Rights of Common

The various rights of common include the following, although the list is not exhaustive.

1. *Common of pasture*

(i) *Right of common of pasture appendant—Freeholders.*

The right of common of pasture appendant attaches to land which was arable land granted freehold of a manor before the Statute of Quia Emptores, 1289-1290. (It therefore follows that the right cannot be created at the present day.) Every

such freehold had the right of common of pasture on the waste lands of the manor. The actual exercise of the right need not be proved. It is 'appendant' to the freehold, and attaches by common right. The right is apportionable with the division of the freehold.

The right of common appendant extends to common of pasture alone. It is subject to two limitations:—

- (a) It is confined to commonable cattle, i.e. beasts of the plough, such as oxen and horses, or animals which compost (or manure) the land, such as cows or sheep.

Swine, goats, donkeys or geese are not commonable, though special rights founded on long usage may justify their feeding on a common.

- (b) It is confined to cattle levant and couchant on the freehold tenement. Avoiding lengthy explanations, this came legally to mean that the number of animals which could be turned out by a freeholder was the number which could be supported on the stored produce of his own freehold to which the right of common was appendant, in winter. It follows that the right cannot be let, but if borrowed animals were used for the purpose of ploughing or composting the land, they could then be depastured on the common.

The right was originally attached to arable land, but it is not lost by the conversion of the land, provided it can be shown that the land might easily be turned again to the purpose of feeding cattle.

If the land were completely built over and could not, or not without great difficulty, be restored to its original state, the question of the abandonment, and therefore extinguishment, of the right would arise.

A right of common appendant cannot attach to a house with no land, and therefore no means of housing cattle.

(ii) *Right of common of pasture appurtenant*

Right of common of pasture appurtenant is not a right under the common law, but is assumed by the law to have been created by grant from the owner of the soil. (It may thus be granted at the present day.) It may pertain to any of the classes of commoner mentioned in paragraph II ante, save that of freehold tenant. It is thus either based on an actual grant or on a presumed grant. In the latter case the right is based on a local law or the custom of the manor.

Many commoners having the right of common of pasture appurtenant were formerly copyholders or holders in customary tenure of the manor. Since, as previously explained, these classes held their lands at the will of the lord, their 'rights' were in accordance with the custom of the manor, the custom being 'taken to have originated in the contract between lord and copyholder when the copyhold land was granted out' (Lord Denman in *Rogers v. Brenton* (1847) 10 Q.B. 26).

The right may be limited by the principle of levancy and couchancy, or it may be for a 'number certain'. Where no number is specified ('sans nombre'), the principle of levancy and couchancy is held to apply.

The right of common of pasture appurtenant need not be limited to commonable cattle, i.e. animals which plough and compost the land. It may apply to donkeys, goats, swine or geese, according to the custom or to the actual grant.

A person entitled to right of common appurtenant must in general use it for his own cattle, but if he employs the cattle of others to manure his land, he may depasture those cattle on the common. Where, however, the common appurtenant is for a specified number, he may license another person to put his cattle on the common land.

Common limited to a certain number may be either for a particular kind of stock or a definite number of different kinds, or it may be limited to a certain number per acre or each yard of the tenement, or according to the rental. Where

the method of fixing a number by acreage or rental has been adopted, it is merely a matter of agreement, only binding on those who assent to it, unless long user has established a custom.

Common of pasture appurtenant may be severed from land, and it then becomes common in gross.

(iii) *Common of pasture in gross*

Common of pasture in gross 'appertaineth to no land, and must be by writing or prescription'. It is neither appendant nor appurtenant to land, but is a separate inheritance distinct from any landed property, and may be vested in one who has not a foot of land in the manor. It may commence at any specified date by grant or it may be acquired by prescription.

It can only be prescribed for by persons or bodies capable of taking by grant—not by inhabitants or occupiers as such. (See paragraph II, 2 (f) ante.)

Common in gross is most normally found to have been common of pasture appurtenant for a specified number of animals, which has been severed from the land. In the rare cases where it exists without specified number, however, the authorities show that a right of common of pasture in gross sans nombre is limited to the right to depasture as many cattle as the common will maintain over and above the levant and couchant cattle of the lord and the commoners.

(iv) *Common of pasture by reason of vicinage*

Common pur cause de vicinage is comparatively rare nowadays, although it probably still exists in Wales and other mountain districts. It seems to have originated by reason of the common lands of two villis or manors adjoining one another, and the commoners of neither taking exception to the beasts of the one straying on to the other ground—in other words a customary acquiescence in trespass. The right must have existed from time immemorial or for a period which the law accepts as proof of its existence. It can be claimed under the Prescription Act, 1832.

The right is subject to the limitation that neither set of commoners may turn on to their respective commons more beasts than their own common will support.

Common pur cause de vicinage can, by its very nature, only exist between two villis or manors, or between two private owners of estates. A claim in respect of a private estate must be by prescription and not by custom. The right must be mutual, and the intercommoning must take place at the same season. Case law would seem to indicate that to put an end to the right, there must be a complete inclosure of one of the commons.

(v) *Rights of sole or several vesture and herbage and of sole or several pasture*

Rights of common are exercised in common with, and not to the exclusion of the owner; but there may be rights over a common which, without giving the interest in the soil, exclude the owner of the soil from all enjoyment of some particular product of the common. While, therefore, not strictly rights of common, for practical purposes they may be treated as such.

All these exclusive rights may be claimed either by an actual grant or by prescription, and consequently by user which will establish a claim by prescription either at common law or by lost grant or under the Prescription Act, 1832.

Sole Vesture

This right was defined by Lord Coke to extend to the enjoyment of the corn, grass, underwood, sweepage (i.e. everything which falls to the sweep of the scythe) and the like, but not to houses, timber, trees or mines, or in any way to the land itself.

This right may be enjoyed throughout part only, or the whole, of the year, and in either case excludes the owner of the soil during the period in question. The person(s) enjoying the sole vesture may let the vesture, reserving a rent. The owners of the vesture cannot dig on the land, since they have no interest in

the soil, but they can inclose and they can bring an action for trespass against anyone entering on the land.

Sole vesture may be limited, e.g. to the first mowing or to all the thorns growing on certain land.

Sole and several pasturage

Sole pasturage is the right to take everything growing on the land in question, by the mouths of the cattle of the person(s) so entitled, but not in any other way. The right may extend to the whole or part of the year. The owners of the sole pasturage may take it with any cattle, and not only with those levant and couchant on their own lands, and may license other persons to put their cattle on. They can bring an action for trespass against anyone entering on the land and treading down the pasturage.

The right does not exclude the lord from all the profits of the soil, since even where the right exists during the whole year, the lord remains entitled to the trees and quarries, and can bring an action for damage to the sub-soil by a stranger. Sole common or pasture means a right of pasture for the commoners, sole as against the lord, but in common between themselves. It is frequently vested in a corporation for the benefit of burgesses, inhabitant householders, etc. of a town.

Rights of sole vesture or sole pasturage may be claimed by reason of an actual grant, or, it is presumed, by user establishing a lost modern grant, or by immemorial usage or prescription. They may be claimed either as appurtenant to land or houses, or in gross.

Freemen of corporate boroughs, claiming through the corporation, have been upheld in the enjoyment of sole pasturage or similar rights, which the corporation have been accustomed to lease.

(vi) Foldage and Foldcourse

Foldage (or faldage, or free fold, or frank foldage) which was originally a reserved right of the lord of the manor, no longer exists, having been finally extinguished under the Law of Property Act, 1922. It was the right of the lord to have the sheep of the tenants folded at night on his land to manure it.

Foldcourse, which grew out of foldage, still exists, however. It is a right of feeding sheep, or a right of sheepcourse, and while not strictly a right of common, has come in modern times to represent what is, in effect, a right of common for so many sheep appurtenant to certain lands where a sheepwalk formerly stood.

2. Common of Estovers and Common of Turbary

The word 'estovers' derives from the Norman-French 'estouffer'—to furnish. Common of estovers is the right of taking the loppings of trees, or the gorse or furze, bushes or underwood, heather or fern, of a common for fuel to burn in the commoner's house, or for the repair of the house and farm buildings, hedges, fences and farm instruments. The English word corresponding to estovers is 'bote'. Hence fire-bote, house-bote, plough-bote, cart-bote, and hey or hedge-bote.

In many cases, the right may only be used in places marked out by the owner of the waste or his bailiff.

The right to estovers is not lost if the house is rebuilt, but if the house is enlarged, estovers cannot be used in the part newly added since this would add to the burden on the servient land. If the character of the right is altered so as to increase the burden, e.g. a change from a hall to a kitchen or malthouse, the right will be lost.

Where the quantity of the product to be taken is certain, the right can apparently exist in gross and be severed from the land to which it is appurtenant.

The right can only be claimed by persons capable of taking under a grant, but such a grant can exist in modern form if there is a specific grant.

With common of estovers may be considered common of turbary—the right of cutting and digging turf or peat on heaths or moors for fuel. The turf or peat must be fit for burning, turf usually meaning growing heather taken to a slight depth only. It must not be green turf.

The rights in the case of both estovers or turhary are reserved to amounts appropriate for the purpose (unless the amount is specified), i.e., sufficient fire-bote for the hearth of the particular house, or sufficient house-bote, hedge-bote or plough-bote for the repair of the house, farm buildings, or farm instruments in question. No commoner has the right to take more than sufficient for his particular purpose, nor, unless the right exists in gross, can he take wood, heather, etc. and sell to someone who is not entitled to take it.

Common of estovers or of turhary must be proved by usage, by modern grant or by prescription. In the view of later writers, these rights are not appurtenant to any land or houses, but exist as appurtenant or attached to a tenement, although common of estovers may exist in gross.

By their very purpose, fire-bote and common of turhary can only be claimed in respect of a house. Plough-bote, cart-bote and hey-bote may presumably be claimed in respect of appropriate land.

Common of estovers usually extends only to undergrowth, but it may comprise the right to lop trees and even to cut oaks. Thorns and windfalls may be the subject of such right.

Rights of estovers and turhary cannot be asserted to prevent the inclosure of part of a common if the land to be inclosed is of such a nature that it could not produce the product in respect of which the right is claimed.

3. *Common of Fodder or Litter*

Common of cutting furze, fern, heather and other small growth for fodder or litter for cattle and subsequent manuring of land does not appear to be included within the definition of estovers, but it is a right well-established.

4. *Common of Piscary*

This is a right of fishing with other persons (and sometimes with the owner of the soil also) in another man's water, and may be either appurtenant or in gross. It may be annexed to lands formerly copyhold of a manor, and in that case may be claimed by custom, but in all other cases it must be based on grant or prescription.

The right is subject to limitations on the lines of those applicable to estovers and turhary.

Common of piscary must be distinguished from a free or several fishery.

5. *Rights of Digging Gravel and other species of Sub-soil*

Rights sometimes exist of taking gravel, sand, loam, clay and other species of sub-soil upon a common. The rules governing such rights are similar to those affecting common of estovers and common of turhary.

The right may be appurtenant to land or be held in gross. Except where the claim is made in right of a tenement formerly copyhold of a manor, the right must be claimed by grant or prescription.

The right is governed by reason and, where appurtenant to a tenement, must be confined to taking the commodities for use on the land or in the house of the claimant. The right must not be calculated to destroy the whole common, and it can only exist in appropriate parts of the waste.

Under the Highway Acts surveyors of highways and highway boards can enter upon open waste lands and remove gravel, sand, stone and other materials for the repair of highways.

IV. *Commonable lands and rights of pasture therein*

The following types of commonable land may be noted.

1. *Lammas Lands*

These are open arable and meadow lands held in severalty during a portion of the year, but which, after the severalty crop has been removed, become commonable,

not only to the parties who have severalty rights, but also to other classes of commoners. They were so termed because the open season usually began on old Lammas Day (12th August).

Great variety exists in the classes of commoners, e.g. they may be the freemen of a neighbouring town, or even the householders or inhabitants of a parish (provided always the rights are vested in a person or body capable of taking a grant), or more generally the owners and occupiers of ancient tenements within the parish (tofts). Similar variety exists in the periods during which the commoners are entitled to exercise their rights.

Where the right to pasture is limited by specific number or by the principle of levancy and couchancy, immemorial usage makes it good in law. A right without limit cannot exist.

Shifting Severalties and Lot Meadows

Within the general class of Lammas lands there may be shifting severalties and lot meadows. Infinite variation exists in these lands, e.g. not only in the character of the persons by whom the rights of common are held and the times at which the rights may be exercised, but also in the way that the lands are held by the severalty owners. For instance, the severalty held may vary from year to year, or periodically according to the rotation of crops.

In old lot meadows, the several portions are undivided, but marked off by boundary stones or other marks, and the owners of the different portions draw lots for the choice each year.

2. Shack Land

Shack land resembles Lammas land in that it is open arable or meadow land held in severalty during a portion of the year. When the hay or crop is removed, it is commonable only to the parties having severalty rights.

The right may have originated in common of vicinage in the case of small parcels of land without enclosure, or it may have altered by the custom of the locality into the nature of a common appendant or appurtenant. One owner cannot enclose against the others unless he can prove a special custom.

3. Gated or Stinted Pastures

These prevail largely in the North of England, and the rights are known by various names—cattle-gate, heast-gate, pasture-gate. Originally in the nature of copyhold tenements, they are now freehold (Law of Property Act, 1922), but notwithstanding, the ownership of the soil remains in the lord of the manor, subject to the right of several pasture upon it by the cattle-gate owners.

Although the ownership of the soil is usually in the lord of the manor, it is not necessarily so. The existence of cattle-gates as incorporeal and corporeal hereditaments has been recognised in S. 11 of the 1845 Inclosure Act.

Cattle-gates appear to have been always for a number of beasts certain, to be capable of separate demise or alienation, and to have been capable of being held as ordinary freeholds, or of a manor as freehold, customary freehold, or copyhold tenements.

4. Sheep Heaves

These (mainly in the North of England) are somewhat similar to cattle-gates, being small plots of pasture, often in the middle of a waste, the soil of which may or may not be in the lord, but the pasture of which is private property and leased or sold as such. They are generally in the hands of a single individual, and strictly speaking, are not rights of common.

5. Regulated Pastures under Inclosure Act, 1845.

This is a form of stinted pasture of modern creation. Under the Inclosure Act, 1845, after the confirmation of a provisional order for enclosure, the whole or part of the land may be converted into a regulated pasture, of which the soil (subject to any reservations of mines, minerals, etc. to the lord of the manor) is to belong to the owners of the stints as tenants in common in the proportions in which they are rated for management expenses.

No enclosure of these lands can take place, but there seems no reason to doubt that the stinted rights may be demised or transferred.

V. Rights of the Lord of the Manor and the Owner of the Soil

Subject to the restrictions of modern legislation, e.g. the Coal Industry Nationalisation Act, 1946, the Petroleum (Production) Act, 1934, the rights of aerial traffic and planning legislation, the lord of the soil has ownership absolute, provided he observes the rights of the commoners. So long as he does not interfere with the commoners' rights, he may use the land and the produce thereof as absolutely as if no rights of common existed.

It follows that the owner of the soil may plant trees, grant licences to strangers to take the herbage and pasturage and other products of and in the soil, but always subject to non-interference with the rights of the commoners. Provided it is not a sole or several pasturage or herbage, the lord has the right to depasture his own cattle on the waste. This right is not dependent upon there being a sufficiency of common for the other commoners.

The lord's right to shoot over and take game on the unenclosed waste and commons within his manor belongs to him as owner of the soil. He may thus grant the right as a *profit à prendre* to another separately from the ownership of the soil.

The right of free warren (or the right to keep and maintain beasts and fowls of warren, e.g. the hare, coney, pheasant and partridge, and apparently, wild duck) is not a manorial right, but a right granted by the Crown originally separately from the manor. It may be appurtenant to the manor by prescription or by the terms of the original grant, but it is not a manorial right.

The lord may sink shafts to work mines and use all necessary and lawful means to procure minerals or other materials from the soil, doing as little damage as possible; he may dig brick earth, dig gravel, marl, loam and sub-soil for his own use and for the purpose of sale, but he must always exercise his rights in moderation, and unless he can prove a special custom, must not infringe upon the rights of the commoners in doing any of these things. On the other hand the lord may be controlled in the exercise of all these rights by prescription or custom.

No mention is here made of the right of the lord to seek to enclose (or 'approve') common land.

VI. Commoners' rights against the Lord of the Manor

Generally speaking, the commoner's interest is limited to the right to eat grass with the mouths of his cattle or to take such other produce of the soil as he may be entitled to do. He may not meddle at all with the soil, nor with the fruit or produce. He may not fill up rabbit burrows, or kill the rabbits (unless there is a special custom with regard to killing rabbits), nor may he fill up a trench in the common dug by the lord, or dig down molehills, cut the grass, etc.

He may abate a nuisance which wholly excludes him from exercising his rights of common without first applying to the courts for relief, but if the nuisance amounts to only a partial exclusion, his remedy lies in an application to the courts for a declaration of the commoners' rights or an injunction.

An action may be brought by an individual commoner against the lord for interference with rights of common by surcharging the common with his own stock or by 'approving' (i.e. enclosing under the Statutes of Merton and Second Westminster) without leaving a sufficiency of pasture, or for taking marl, loam, soil, etc. to the detriment of the pasturage.

The commoners are not liable for damage which may accrue to others in the exercise of their rights. For example, if in the case of commonable lands, an owner left his corn or crop uncut after the day appointed for the commoners to enter on the land, and the commoners' cattle ate the corn, no remedy would lie against the commoners, nor could the cattle be driven out.

Annex II

RIGHTS OF COMMON: COMMONABLE ANIMALS

(supplied by the First Assistant Secretary, R.I.C.S., at the Royal Commission's request in answer to Question 2344)

Only 'commonable animals', e.g., horses, oxen, sheep and kine, can be depastured on a common where the right to pasture derives from a right of common appendant, whereas other animals, in addition to 'commonable animals', can be depastured on a common by reason of a right of common appurtenant—the latter right deriving, not from common law, as the right of pasture appendant does—but from an actual grant, or a presumed grant (i.e., the local custom of a particular manor) from the lord of the manor to his original individual copyholders.

I. Common of Pasture Appendant: Section III of Annex I to the Institution's Memorandum: Paragraph 1 (f) (a), page 536.

The appropriate statement in the Annex is reproduced for ease of reference. It is as follows:—

'The right of common appendant extends to common of pasture alone. It is subject to two limitations:—

(a) It is confined to commonable cattle, i.e., beasts of the plough, such as oxen and horses, or animals which compost (or manure) the land, such as cows or sheep.

Swine, goats, donkeys or geese are not commonable, though special rights founded on long usage may justify their feeding on a common.'

The authorities for this statement are:—

(i) '*Halsbury's Laws of England*', Third Edition, Fifth Volume. (Butterworth and Co.) Paragraph 702, page 304.

'702. *Cattle in respect of which right exercised.* The right is confined to such cattle as serve for the maintenance of the plough, as horses and oxen to plough the land, and sheep and kine to compost (that is, to manure) it. (f) Hogs, goats, geese, or similar animals are not commonable by virtue of a right of common appendant(g).'

(ii) '*The Preservation of Open Spaces, Footpaths and Other Rights of Way*'. Sir Robert Hunter, M.A., J.P. Second Edition (1902). (Eyre and Spottiswoode). Page 28.

'The right of common appendant extends to common of pasture alone. It has been defined to be 'the right which every freehold tenant of a manor possesses to depasture his commonable cattle, levant and couchant on his freehold tenement, anciently arable, on the wastes of the manor.'

From this definition we see that the right is subject to two limitations. It is confined to commonable cattle, and to cattle levant and couchant on the freehold tenement.

Commonable cattle are either beasts of the plough, such as oxen and horses, or animals which manure the land, such as cows and sheep.² Swine, goats, donkeys and geese are not commonable, though special rights founded on long usage may justify their feeding on a common.'

(f) Co. Litt. 122 a. Elton (Elton on Commons 47) defines it as a 'prescriptive right in freehold tenants of a manor of feeding their cattle used in agriculture upon the lord's waste', and refers to Y.B. 37 Hen. 6. fo. 34, pl. 20; and Bro. Abr., Common, 13, 16. And see, further, Mitcham Common Conservators v. Banks (1912), 76 J.P. 413. The turning out of entire animals on commons may be regulated by resolution of the commoners; see p. 424, post.

(g) Co. Litt. 122 a; and cf. Standred v. Shorditch (1620), Croke Jsc. 580.

(1) Williams on 'Rights of Common', edition 1880, p. 31.

(2) Tyingham's Case (1584), 4 Rep. 37a.

- (iii) *Tyringham's Case*: Extract from 'The English and Empire Digest': Volume 11. (Messrs. Butterworth and Co.) Part II entitled 'Different Rights of Common', page 6, paragraph 22:

Held:

(2) Common appendant only belonged to ancient arable land, and for horses and oxen to plough, and cows and sheep to manure the land: it could not be appendant to meadow or pasture'.

- II. *Common of Pasture Appurtenant*: Section III of Annex I to the Institution's Memorandum: Paragraph (1) (ii), page 536.

'The right of common of pasture appurtenant need not be limited to commonable cattle, i.e., animals which plough and compost the land. It may apply to donkeys, goats, swine or geese, according to the custom or to the actual grant.'

The authorities for this statement are:—

- (i) '*Halsbury's Laws of England*', Third Edition: Volume 5, paragraph 710, page 308.

'710. *Cattle in respect of which right exercised*. Common appurtenant is not confined to cattle used to plough and compost; but if the prescription should so run, it may be for hogs, goats, geese, and all other animals which may be sustained upon the common(o). The turning out of entire animals may be affected by regulations made under statutory powers(p).

In the absence of an express grant, evidence of user will establish the prescription, but where the grant is produced, as sometimes happens, the courts have to read the rights of the commoners in the terms of the instrument(q).

- (ii) *The Preservation of Open Spaces, Footpaths and Other Rights of Way*. Sir Robert Hunter, M.A., J.P. Second Edition (1902). (Eyre and Spottiswoode) page 35.

Referring to the right of common of pasture appurtenant Hunter says:—

'The right of pasture is not, however, necessarily confined to commonable cattle—that is, horses, oxen, cows, and sheep. As the right depends entirely on the local custom, if it has been usual to depasture donkeys, goats, swine, or geese, the right of the copyholders to turn out such animals may be established.'

(o) Co. Litt. 122 a; Bac. Abr., Common A, 2; 2 Bl. Com. 33. In *Withers v. Iseham* (1551), 1 Dyer, 70 a, a claim of common for hogs was raised, but not decided.

(p) See the regulations made under the Commons Act, 1908 (8 Edw. 7 c. 44); and see p. 424 post.

(q) See *Smith v. Feverell* (1675), 2 Mod. Rep. 6; see also another report of the same case in 1 Freem. K.B. 190. A claim to turn out geese has been rejected on the ground that the user was not shown to have been in any way connected with the copyhold tenement (*Morley v. Clifford* (1882), 20 Ch.D. 753).

Examination of Witnesses

Mr. R. C. WALMSLEY, F.R.I.C.S., F.L.A.S., Mr. E. H. FLEMING SMITH, T.D., F.R.I.C.S., F.L.A.S., Mr. T. R. TILL, F.R.I.C.S., F.A.I., and Miss E. M. RUTLAND on behalf of the Royal Institution of Chartered Surveyors.

Called and Examined.

2224. *Chairman*: May I say how indebted we are to you for your very clear and useful memorandum. I would particularly like to thank whoever drafted the Annex, which I think has been extremely well done and puts the law of commons very clearly.—*Mr. Walmsley*: The credit for that is entirely due to our First Assistant Secretary, Miss Rutland.

2225. I have no questions on pages 1 to 4, but members may have.

2226. *Mr. Arnold-Baker*: There is no mention in paragraph 11 of minerals. Is that accidental?—Yes. It could be treated as an accidental omission, unless minerals were regarded as covered by the omnibus paragraph (g).

2227. *Dr. Hoskins*: Nor is there mention of the possible use of commons as car parks. Does that come under paragraph 11 (d) or (g)?—It could come under either. The heading for (d) in fact could be 'Development', which would cover any non-agricultural use or any other use which is not set out in the other paragraphs. Might I also mention while we are on paragraph 11, that we have had the opportunity of reading the minutes of evidence of many of your previous hearings, and we have noted the confusion which has arisen between the word 'inclosure' and 'enclosure'. In paragraphs 12 and 13 of our memorandum the word 'enclosure' appears twice. I think it should more correctly be 'inclosure' in both places.

2228. *Professor Stamp*: Can we turn to the very important Section V, dealing with the need for an up-to-date register of rights of common? It says there: 'The last survey of common land took place in 1874'. Can we have the reference for that?—*Miss Rutland*: The statement is from a speech by Mr. Nugent, Joint Parliamentary Secretary of the then Ministry of Agriculture and Fisheries, replying to the debate on derelict common land which took place in the House of Commons on 14th May, 1954. He said, 'I recognise that it would be a great help to us if we knew precisely what was the acreage of com-

mon land and of what it consisted. The last survey which was presented to Parliament was in 1874, which is, of course, some years ago.' I understand that that was not a detailed survey of commons as such, but was based on extracts from the tithe returns.—*Mr. Fleming Smith*: I believe that it was by no means complete at the time, and was very superficial.

2229. *Chairman*: On to Section VI, the compilation of a register of rights. Does the Institution think that such a register could in fact be compiled in three years? Would members of the Institution carry out the survey?—*Mr. Walmsley*: Might I not reply to your second question until I have dealt with the first. Our memorandum was drawn up as a framework by a sub-committee of which I was chairman, and then approved by our Council. But since it was approved and submitted to you, my colleagues and I have had the advantage of reading your minutes of evidence, Numbers 1 to 8. We thought that without prejudice to the framework that is in the paper before you we could try to clothe it with some flesh that would still be consistent with the memorandum, but would thereby supplement the advice which you have had from other bodies. Against that background, and referring now to the suggested register, we feel there should be a reasonably short time, such as three years, laid down as the normal period within which claims ought to be presented. It should be short, because it would be only after the expiration of that initial period that the way would be clear for the interested commoners to get together, work out their scheme and go ahead with it. Our feeling is that the register of claims at the end of the three-year period would be sufficient evidence of claim to title, for the persons who had registered rights over a particular common to work out a scheme. But it would be quite consistent with our line of thought that the register of claims should not then be closed. There should be provision for late entries, but they should not hinder a scheme going forward.

2230. Are you expecting anybody to investigate the validity of the claims?

—That is another big question which we deal with in paragraph 19. What we have said in the memorandum is: 'All claims should be satisfactorily established before being recorded in the register of common land'. I think, to meet the comments which have been put forward by a number of other witnesses, it would be quite consistent with our line of thought if the initial register were a register of claims, and that if necessary there should be a second register at a later date of those claims which had either been disputed and upheld or had been on the register of claims sufficiently long, possibly 30 years, to have established by the fact of their undisputed presence on the claims register an adequate title without further proof.

2231. Would that procedure also meet the problem of expense, which would of course be enormous if all common rights had to be investigated?—Yes. We would anticipate that in a great number of commons the rights claimed would correspond with the consensus of opinion amongst the people interested in what the rights were, and there would thus be no dispute to settle.

2232. Would it follow that even if someone's claim were disputed that person would have the right to vote on any local committee or anything of that sort?—The kind of arrangement that we had in mind was that if at the expiration of some such short period as three years, the commoners or other persons who felt they ought to take an active part in a particular common formed themselves into a group and said: 'We are going to make a commons scheme for this common', they would have available in the register of claims a full note of everyone who thought they should be in the picture. The commoners who had come together would quite readily say either: 'Yes, those claims appear valid to us', or: 'We see Mr. Jones claims he has a right to run 200 sheep on the common, and we say he has not'. If there were such disputed claims we feel they should be dealt with by the suggested local Sub-Commission, referred to later in our memorandum, whose decision would be subject to appeal to one of the courts of the land.

2233. Would you then in effect have an appeal to the local Sub-Commission

and then an appeal from the local Sub-Commission to the county court, or something like that?—The Sub-Commission would act as a court of first instance, and there would be an appeal to one of the courts of the land.

2234. *Mr. Arnold-Baker*: Why not the county court instead of a Sub-Commission?—I do not think there would be any objection if it were felt that any cases of dispute should go straight to the county court. I am sure we should not regard that as a point of principle at all.

2235. Have you actually considered that as a possibility, or considered what the objections might be?—No, the Institution as a body has not considered that particular point.

2236. *Mr. Floyd*: How would the Royal Institution consider dealing with claims in the first instance in cases where, as we heard last month when we went to Malvern, every ratepayer in 13 parishes claimed rights over 1,600 acres? Another similar case might arise in respect of Dartmoor. It seems to me that some of those claims would have to be cleared out of the way before specific schemes could be dealt with, and I wondered whether you had thought of any preliminary body which could cope with them?—I should have hoped that there could be machinery for public advertisement, to call what would in effect be a town's meeting of the communities who were entitled to that kind of rights. That local meeting could set up the kind of committee which should be entrusted with the sort of powers that we feel must be given to a committee for every common which merits management.

2237. In the old days of course ratepayers were occupiers of agricultural land, but ratepayers now are people who have houses. There is always the odd man though who will claim his right, and does so today.—I think that paragraph II 2 (f) of Annex I deals with this point.

2238. *Chairman*: Is the implication that there is always a legal entity in whom these customary rights are actually vested?—Yes.

2239. *Mr. Arnold-Baker*: Have you considered the rights of recreation in these cases, which very often are not vested in anyone but are customary rights accorded, and enforceable in Chancery.

to the inhabitants of a defined locality? There are plenty of cases of the kind.—I should imagine that to get an effective local committee commanding the support of those persons or bodies who were interested in a particular common there would have to be a formula which would entrust the safeguarding of a right like that either to a particular local authority or to a particular body like the Commons Preservation Society. They would have to come under the protection of some defined and recognisable society or body which would watch those rights.

2240. That would presumably be convenient administratively, but my point is that the law does not make any provision of that sort at present.—Very little in our memorandum rests on the current law. If our recommendations are to be of any use it would involve a very considerable thaw in the present freeze-up of the law.

2241. *Chairman*: The question is how can we thaw it without letting it all run away? The three-year period then is for the registration of claims? Would that cover, for example, the case of a right of common being vested in a minor who would not be able to claim for possibly 20 years?—It would.

2242. Would it still allow him to make his claim when he came of age?—It would, but it would have the virtue of enabling a scheme to go forward without the risk of such latecomers upsetting it.

2243. *Mr. Floyd*: Would the Institution suggest therefore that the enabling legislation should give powers to such bodies as county councils to take over the rights where there are large numbers of individual right holders?—Yes, I think that would be inevitable.

2244. *Professor Stamp*: Are you now withdrawing or modifying paragraph 19 of the Institution's memorandum?—Amplifying, rather. There could be an initial register of claims, and our use of the word 'register' in paragraph 19 could be regarded as applicable to the register of rights established, either by proof or by the effluxion of time.

2245. *Chairman*: Would there then be two registers, a register of claims which at the end of a period of prescription would in fact become part of the register of

rights?—That is so after a sufficiently long period.

2246. But would there meanwhile be a separate register of rights which had been ascertained and proved?—Yes. Where you had a common to which our suggested machinery applied you would reach the stage of a committee drawing up a scheme which, by itself, would entail the establishment of rights over that common. All the rights for that particular common would thereby get into the second register.

2247. *Mr. Arnold-Baker*: Something like the Land Charges Register?—Very similar.

2248. Could one follow the same model?—I should have thought so.

2249. *Mrs. Paton*: You spoke of a possible waiting period of 30 years during which a person might be able to enter a claim; do you suggest that at the end of the 30 years there would be a final settlement?—In our opinion there must be finality. Thirty years is an empirical figure. It must be sufficiently long to make sure that it covers such cases as minors, the gentleman mentioned by previous witnesses who 'had gone to Australia', or the person on the spot who has failed to register, to the detriment of someone elsewhere whose interests he is neglecting. But having allowed that kind of period to elapse we feel there must then be finality.

2250. *Chairman*: There is also of course the problem, which I do not think you have touched upon but which must clearly have been in your minds, of determining the limits of the common as a piece of land.—Yes. These proposals of ours would necessarily involve the compilation not only of a register but of a plan, possibly on a 2½-inch scale, defining the boundaries of each common, or possibly of each group of commons if that were more convenient.

2251. Would it be a complete survey with the boundaries drawn on the maps, and so forth, as with the registration of title?—We thought that a scale of 2½-inches to the mile would be convenient, and that in many different offices up and down the country there will be, not actual plans of commons, but raw material of the greatest assistance to anyone whose job it may be to define the common land. The local offices of

the Ministry of Agriculture, of the planning authorities, and of the District Valuers of the Inland Revenue all have plans which probably show commons as a kind of residuum. We felt that it would not be an impossible task to get a national plan showing all the commons, working from those initial sources as a foundation.

2252. Would there not be plans in many enclosure awards?—Yes, there would, indeed.

2253. But possibly since those awards there will have been encroachments and it may be rather difficult to find out whether those encroachments have in fact become prescribed; how are those legal problems as to the boundaries to be dealt with?—I have no ready answer, but I would not regard this difficulty as a major obstacle.

2254. *Professor Stamp*: In paragraph 17, you say: 'The basic essential . . . is to obtain an up-to-date Domesday Book of Common Land', I could not imagine that without full maps; so I was surprised when just now you said 2½-inch, which is not a survey accurate map. Would your Institution agree that you could not use anything smaller in scale than a 6-inch, because many of the commons with which we are concerned are just a few acres in extent. I had presumed that was in your mind when you were talking about an up-to-date Domesday Book.—Yes, I would very readily modify my earlier reply to the extent of saying that it would be essential to have the plan of any individual common to a scale which would sufficiently define the boundaries. It might even in some cases have to be a 25-inch.

2255. On the 1941 farm survey, plans of farms were prepared on a 6-inch and often on a 25-inch scale; but when they were put together we found not only private owners claiming the same piece of land but the most mysterious pieces of land of various sizes, shapes and positions, which were apparently not claimed by anybody. I feel sure that as soon as you start to put commons on to maps you will find just the same discrepancies.—*Mr. Fleming Smith*: Yes, I agree, but on reflection I feel that the use of a 6-inch scale at least would be essential for getting an accurate record, enlarged where necessary by a 25-inch scale map.

2256. *Mr. Arnold-Baker*: Would you make questions of legal title and status dependent upon the lines on the map itself? Would they not depend upon the statement that accompanied it? I am thinking of the plans attached to conveyances.—*Mr. Walmsley*: In the ultimate, the plan and the register would have to run together. The plan would have to be definitive in the ultimate, although not in the initial stages when it would be subject to proof or rebuttal.

2257. *Chairman*: There would be cases where everybody says that Black-acre is a common but in which you will not find any commoners claiming to have common rights. This might be particularly true of a suburban common where the common rights in fact are valueless, and the value of the common lies in its being open to access by people in the town. How is a claim to be made there?—It seems quite possible, that you will have commons where there are no claims, and nothing will happen.

2258. *Mrs. Paton*: Could they not be vested in the town?—Yes. Might I ask the Chairman whether his question applies mainly to land in urban localities?

2259. *Chairman*: I was thinking more of commons on the outskirts of towns, where in fact the common rights have long since disappeared except in the legal sense, because it is not worth while to exercise them, but the land is regarded as common and therefore the population thinks it has a right to go there. Would not the local authority in that case have to be given the right to claim it?—Yes, certainly.

2260. *Mr. Floyd*: There may well be many cases in the Surrey area where common rights have not been exercised for the last few decades for various reasons, but if there were to be any scheme for improvement might not all sorts of claims crop up?—Yes, I am sure if there is either recognition or anticipation that something is going to happen with commons a great number of people who had hitherto not attached much value to their rights on those commons would reappear readily.

2261. *Chairman*: I have only one more question about the register, and that arises out of paragraph 23, which has to be read, I think, with paragraph 37: 'Similarly village greens or areas of common land with a predominantly residential environment, whether urban

or rural, should be exempt from the proposals. The preservation and regulation of such areas offering amenity value only should be the responsibility of the appropriate local authority.' Are village greens always used only for amenity purposes?—Probably you will know better than we, I think.

2262. It seems a considerable lacuna in your proposals. Is there not a great deal of controversy over many village greens?—What we felt was that our proposals were not only something radically new but also superficially complicated, though I do not think in practice they would prove to be so; and that it would not be appropriate to take such a sledgehammer to crack the nut of a village green. It would be more sensible to tell the appropriate local authority, the parish council or rural district council, to look after the small areas of common.

2263. *Professor Stamp*: Is the answer to the Chairman's question, that when the register has been compiled, the next essential step would be a classification of commons? One category might be the regulated metropolitan commons, another the village greens, with certain rights and details laid down for that group. A decision would have to be reached whether an individual piece of land fell into one particular classification or another. Is that the way in which you envisage it?—Yes, that could well be so.

2264. *Chairman*: Is it too wide a proposition to say that your proposals really cater for those pieces of common land which are capable of agricultural development?—No, that is too narrow a proposition. What we concerned ourselves with mainly were the commons where something ought to be done; it might be their better use for agriculture, it might be improvement for the future better enjoyment of amenity, it might be the provision of an area for afforestation, even possibly, and to a smaller extent, for housing. Those commons which seem to be going on quite satisfactorily without anyone doing anything special about them we felt would cause little trouble to anyone under our proposals.

2265. On your next recommendation, Section VII, I think it is the first time that it has been suggested to us that the responsibility for dealing with commons should be handed over to a

body of Commissioners. Most of our witnesses have suggested that the Ministry of Agriculture or some other Ministry should be responsible for commons, so that there could be criticism if need be in Parliament. Why have you suggested a body of Commissioners instead?—Possibly on that point our memorandum is not full enough. It is to be regarded as a framework. Within that framework it would be entirely consistent to have a small Commission responsible to the Minister of Agriculture, Fisheries and Food. They would be a recognisable entity with a defined responsibility for commons. People could write to the Common Land Commission knowing it was their job, instead of writing to the Ministry of Agriculture as at present, who pass the letter to a member of the staff versed in common land.

2266. Would the Minister accept responsibility for the decisions taken?—Yes, we should be quite happy with that.

2267. *Professor Stamp*: Is that the position with the Agricultural Land Commission?—Yes.

2268. *Mr. Floyd*: And the Forestry Commission? I believe the Minister, but not the Ministry, answers for them?—

Mr. Fleming Smith: Yes. Also a similar framework has been adopted for the Crown Estate. There is an independent Commission responsible to the appropriate Minister, so that the cases are comparable in every way.

2269. *Mrs. Paton*: I think we have had one suggestion that responsibility should be placed on the Ministry of Housing and Local Government. Do you think the Ministry of Agriculture is the better body?—*Mr. Walmsley*: Could I give an answer to that which possibly covers other points as well, putting it into perspective? What we felt was that if for a particular common there were a recognised body, which we may call a committee and which would first prepare a scheme for that common, the committee would be substantially in the same position initially as if they had been freeholders of the land, in so far as their potential authority for dealing with the land was concerned. They would also be in a position very similar to that of a planning authority for the land, in that they would draw up their improvement scheme. They might also well meet with competing interests, who wanted to plant trees, or to build

houses; to have public rights of way, or to improve areas for agriculture. The committee would draw up their scheme in that atmosphere of potential competition for the use of the common. Having drawn up their scheme, with the help and advice possibly of the local Sub-Commission, there would then be a public local enquiry, very similar indeed to those which are held on the planning schemes drawn up by local planning authorities. It would be the responsibility of the Minister of Housing and Local Government to appoint one of his inspectorate to hold the enquiry and make a report to him, as being the Minister responsible for the best land use. The Minister's approval of that scheme would be fully effective, there would be no question of reference to Parliament, the Minister would decide just as he does on a planning scheme. It would save going to Parliament as is necessary under present legislation. It was inevitable 50 or 75 years ago that Parliament should give their approval but now that we have our modern technique of dealing with land use problems it appears archaic and unnecessary. The Minister of Housing and Local Government would therefore act as the arbitrator, he would not be responsible for commons but he would have to resolve any competing uses for any particular common, and his decision would be final.

2270. *Chairman*: Would this not involve the transfer of the present responsibility from the Ministry of Agriculture to approve inclosure, fencing or any schemes of that kind?—Yes, it would involve that change. The Minister of Agriculture would be one of the potential competing users of a common. The agricultural use might be in competition with the amenity use, the housing use or the forestry use.

2271. At present I think the problem of amenity on commons is one for the Ministry of Agriculture, not the Ministry of Housing and Local Government. Would not the ultimate responsibility have to be transferred from the one Ministry to the other?—The final responsibility for approval of schemes would be transferred.

2272. *Mr. Arnold-Baker*: Is it your point that the Minister who has to make the final decision ought to be somebody who is not directly engaged in the possible use?—That is our point exactly.

2273. Do you want an impartial Minister, the Lord President of the Council, for example?—Yes, except that the Minister of Housing and Local Government has the whole of the expertise on holding public local enquiries. It is exactly his function and he has the confidence of the community in that.

2274. *Professor Alun Roberts*: But does he also not have a departmental interest in the land? Are you not merely shifting responsibility from one interested Minister to another?—Only to the extent that a part of any particular common might be required for housing.

2275. Even so does your proposed transfer of Ministerial responsibility really lift the use of the land above the field of contention? As long as the chosen Minister has even a residual interest would you gain what you hope to gain?—I think that criticism must be conceded. It is, however, already accepted that if a local authority wishes to exercise compulsory powers for the acquisition of land for housing it makes its compulsory purchase order, objections are lodged, and it is the Minister of Housing and Local Government who sends an inspector to hold a public local enquiry.

2276. *Professor Stamp*: You say in your memorandum that there are 2 million acres of common land, of which $1\frac{1}{2}$ million are really purely agricultural. In your last answers are you not thinking rather of the residue, where there is an urban interest? Do you believe that the Ministry of Housing and Local Government has as much interest in the future of the bulk of common land as the Ministry of Agriculture?—If the real use were agricultural there probably would not in fact be a conflict of interest, but if a conflict did arise it would be very desirable that the Minister who had a vested interest in the agricultural use should be absolved from the responsibility of determining objections from other interests who felt the use should not be agricultural.

2277. But has not the Ministry of Housing and Local Government a vested interest in housing?—That is true, but that defect seems to have been accepted in our current legislation applying to land use, and I feel that it is the

smallest defect we are likely to meet. Could I invite my colleagues to comment on this? It is a very important point.—*Mr. Fleming Smith*: We are anxious to ensure that if there is a variety of interests the enquiry at a local level should be held through his inspectorate by the Minister responsible for the various land use interests. The actual responsibility for examining a scheme would still rest with the Minister of Agriculture, Fisheries and Food, in other words, the overriding Minister responsible for the Commission. It is our anxiety to ensure that at the local level all the varied interests are properly heard by the Minister regarded as responsible for land use. It is for that reason that we make the suggestion that any public local enquiry should be held by one of the Housing and Local Government inspectorate.

2278. *Mr. Floyd*: Will the Ministry of Housing and Local Government not be concerned with the housing interest on urban or semi-urban commons, and will it not be in just those cases where he is interested that competition will arise? If alternatively you take the 1½ million acres where the competition might be between forestry and agriculture, I believe forestry is not development within the terms of the Planning Acts. Would you not come back once more to the position that only where there was competition of other uses with housing would the Planning Acts operate and it would be the very Ministry interested in housing which would be involved in settling the differences of opinion.—*Professor Alun Roberts*: Might I add a gloss to that? These 2 million acres of common are at present left untouched for future generations. Once you permit even a small deviation from the present use, albeit for the best reasons, you are committing the land to other purposes and if it is then used for housing, any alternative use is utterly excluded. Is it right that a Minister who has a stake in housing should commit the land to that use finally and irredeemably?—Of course, in as much as he is responsible for land use the Minister of Housing may appear to be an unfortunate choice. Nevertheless, the fact remains, that under present legislation, the confirmation of development schemes which embrace land use including the use of land for agriculture, is still the responsibility of the Ministry

of Housing and Local Government, the Ministry of Agriculture contributing its observations in so far as the correct land use is concerned. We are attempting to adopt the same principle in deciding on the correct land use for commons in the years to come. We are most anxious to adhere to the principle which now appertains for deciding land use throughout the country.

2279. *Chairman*: But does your scheme not go much further than deciding the use of the land? If it is decided 'This common shall be agricultural,' would not a scheme for it have to contain detailed regulation for the pasturing of cattle and sheep, and so forth?—*Yes*.—*Mr. Walmsley*: That is possible—this discussion naturally is going beyond our framework, and we are trying to be helpful to the Commission in expressing our views as three individual chartered surveyors. Following your line of thought, however, it would be consistent with our memorandum if the Commission thought proper for there to be a two-stage enquiry if necessary; the first stage would be land use, which we feel must come under the Minister of Housing and Local Government. He might be invited to decide that the whole of an area was agricultural, or part agricultural part non-agricultural. It would then be left to the Minister of Agriculture to deal with the details of how the agricultural part should be managed.

2280. That meets one point, but it raises another on Section VII. The whole procedure is going to be very costly. Would you not increase the cost by having two sets of enquiries?—We do not want two enquiries.

2281. Does not your proposal involve first an enquiry by an inspector of the Ministry of Housing and Local Government to decide whether the land is agricultural, and then, assuming there is some opposition, a second enquiry by an inspector of the Ministry of Agriculture to decide whether the scheme which the local committee has put up is a good one?—That is true, but our proposal is for one enquiry. I gathered from the questions that the Commission were not happy with that, and my answer was really an attempt to indicate what the alternative would be.

2282. *Professor Stamp*: Reverting to the proposal for an *ad hoc* body, the

Commissioners for Common Land, you say that the work of the Commissioners should be decentralised to county level with a Commons Sub-Commission in each county. Are those Commons Sub-Commissions going to be like the Commissioners for Common Land, with part-time or full-time salaried Sub-Commissioners, plus a salaried staff? Are they going to prepare schemes or will that be done at headquarters by the Commission itself? If you are going to have Sub-Commissions in each of the counties then the whole business of expense obviously becomes very much greater.—Our feeling was that the Sub-Commissions would be voluntary; they would have to have a small salaried staff, particularly for the preparation of the plans and the compilation of the registers. The central Commission would delegate as much of their duties as they could to the local bodies and would be primarily responsible for co-ordination, helping one county which had met a difficulty that had been surmounted by another county. The main bulk of the work should be done at local level.

2283. Broadly speaking the present system of local enquiries by inspectors of the Ministry of Housing and Local Government is at county level and the majority of cases are prepared by the county authorities. Would not your county Sub-Commission similarly be saddled with a large amount of what I might call day-to-day work?—I would not imagine there would be much day-to-day work.

2284. *Chairman*: Would an enquiry be needed at all if there was no opposition?—Certainly not.

2285. Only in the exceptional case where conflict arises?—Reading the minutes of the evidence already submitted, it seems at any rate likely that those who want better agriculture might very readily come into, not opposition, but competition, with those who want more access, and it might be exceptional to find that a scheme was accepted by everyone who was interested in a common.

2286. Do you think then there would need to be consultations beforehand?—Yes. It would be desirable to have a minimum number of enquiries, because of the expense.—*Miss Rutland*: We have in fact said in the memorandum that

there should be an enquiry in any case before a scheme is adopted.—*Mr. Walmsley*: It is in paragraph 54, sub-paragraph H. The point might still be covered within our framework by laying down that there must be notification given to all interested individuals, also public advertisement of the deposit of a scheme at county and parish level—but, no objections received, no public enquiry.

2287. *Mr. Arnold-Baker*: Would you simply give anyone a right to claim an enquiry if they really wanted one?—Certainly.

2288. *Chairman*: Turning to paragraph 42 and commons schemes, Sir George Pepler, who could not be present today, wanted to ask you: 'Who would determine the value of the rights of individual commoners with reference, as you put it, to a two-thirds (in value) majority request?'—The ultimate responsibility must devolve on the Commission, but they would no doubt delegate that to their Sub-Commissions. Initially, responsibility would be with the commoners themselves. We feel that for any particular common, as and when a committee of the interested commoners were called together, they would be able to resolve that point fairly readily. They would know whether they represented two-thirds in value of the total interests in the common; they would first satisfy themselves on this point knowing that the Sub-Commission would put them to proof of it if they did not initially themselves produce adequate evidence. The question of value in the sense of a majority of two-thirds value would arise once and for all at that stage only, when it had to be decided whether the people who were ready and wished to make a scheme did in fact adequately represent a sufficient majority in value of those who had a stake in the land.

2289. Would the scheme be invalid if it were subsequently proved that they had not represented two-thirds in value?—No. If the Sub-Commission allowed a scheme to be prepared that would constitute an acceptance of the proposition that the preparers of the scheme did represent an adequate majority.

2290. *Dr. Hoskins*: What is the merit in a two-thirds majority by value rather than, say, a two-thirds majority counting heads?—Partly historical. It goes back

to the 1845 Act and was repeated in the 1876 Act, and it is in our opinion a correct principle. If you have, for example, a common on which the basic rights are to run sheep, and one man has the right to run 500 sheep, and another man the right to run five sheep, you cannot equate those rights by heads.

2291. That is the most extreme case. Might it not happen that the one man with the right to pasture 500 sheep constitutes the necessary two-thirds by value, but against him for the sake of argument there may be 50 small people each with the right to pasture five sheep. In such circumstances you may well get a scheme initiated by one man against the wishes of a considerable numerical majority. —The point only arises if it is necessary to ascertain whether the major user of the land, in terms of sheep, wants to make a scheme at all.

2292. *Professor Stamp*: Would you not in fact have to determine the value of stints for every common in the country? Where stints exist then the figure might be ascertainable, but otherwise they would not, would they? —*Dr. Hoskins*: Apart from this, you speak in paragraph 39, rightly I think, of the trail of feeling from past enclosures, and I think it is a fact that the 18th and 19th century enclosures could be and were initiated on the same basis. It was either a three-quarters or four-fifths majority by value but it still resulted, very often as a matter of fact, in a small minority of landowners with common rights initiating a Bill, carrying it through Parliament, and starting up machinery against the wishes of the numerical majority. I should have thought that was where the trail of feeling was generated in the first place. —I take *Dr. Hoskins'* point, but I had anticipated that his concluding sentence would have been the opposite, that the man who could run 500 sheep would sit down and do nothing, against the wishes of the 50 people each of whom could run five sheep, and that there should be provision for the small men to come in and say: 'This common is not being properly run and we think there should be a commons scheme'. Under our proposal their position might be in jeopardy because they could not muster sufficient sheep.

2293. *Mr. Arnold-Baker*: As I understand the Institution's proposals, the two-thirds majority would not be able to

determine what was in the scheme but merely that there should be a scheme. —*Mr. Fleming Smith*: That is all.

2294. Therefore the protection to the minority by value or the minority by heads, whichever you chose to take, would come presumably from the power of the Commissioners or Sub-Commission to approve or withhold approval of the scheme? —*Mr. Walmsley*: Certainly. I was trying to meet the point that possibly a large number of small commoners would be unable even to start a scheme because they could not muster enough sheep although they had enough heads.

2295. *Mrs. Paton*: In that case would they be able to apply to the Sub-Commission to override the two-thirds majority in value? What assurance is there for a minority in value that their wishes for a scheme were going to be considered? —We are only dealing at this stage with the question whether there should be a scheme or not. There might well be protection to prevent one main interest doing nothing, against the wishes of a large number of smaller interests who felt that something ought to be done. That would be an additional rider to our proposal.

2296. *Dr. Hoskins*: Is that not an argument for allowing two-thirds in numbers to be an initiating body? —I do not think there is any objection in theory to that, but in practice it seems to us that no scheme would work unless it had the support of the people on the spot who were interested in it. Unless the people with the major interest were behind the scheme it would be unrealistic to have the scheme, since it would only be worked by them.

2297. *Chairman*: After hearing your answer to *Mr. Arnold-Baker's* question I do not think I have quite understood the proposal. I thought paragraph 42 defined the body by whom a scheme was actually to be prepared. Would not the content of the scheme in the first instance be determined by the two-thirds majority in value? —No, indeed. The two-thirds majority (in value) of the commoners would ensure, by their request, that a scheme be prepared, but it is not they who would be solely responsible for its content. Any and every commoner, also the owner if he so wished, could participate in the actual preparation of the scheme. There would

be the fullest opportunity to safeguard the minority not only in discussion within the committee, but also under the guidance of the local Sub-Commission, and in the ultimate at the public local enquiry. I cannot see that you can safeguard the interests of a minority to a greater extent.

2298. Is it not, in fact, not merely the proposal to have a scheme, but also its initial content which is decided by the two-thirds majority in value?—Not solely. My answers were directed to the point as to the ascertaining of the two-thirds value, and that question only arises at the point of deciding whether there should be a scheme at all.

2299. It is decided that there shall be a scheme, then a scheme has to be submitted, and in due course to be adopted by a majority of some kind?—Yes, but we felt that once there was a committee entrusted with the job of preparing a scheme, it was by no means logical that that committee should govern its procedure by value. Once there was a consensus of opinion that there should be a scheme, the committee would sit round a table, and they could well count by heads instead of by sheep, and probably would do so.

2300. *Dr. Hoskins*: If you worked on, say, a 50 per cent. or two-thirds majority by heads, are you not much more likely to get a committee formed anxious to do something than if you had a majority by value? A numerical minority of, say, two or three people would never succeed in forming a committee.—That is correct. The only point against it would be that it would appear very altruistic for the smaller interested people to be working out a scheme which, if properly carried out, would be of immense benefit to the bigger man and of very much smaller benefit to themselves.

2301. *Chairman*: We have, of course, been taking one of your alternatives. The other one is that the lord of the manor would prepare the scheme.—Yes.

2302. *Mr. Floyd*: Might not the lord of the manor's interest in gravel for example, lead him to take an opposite view from the commoners? How would such a conflict be settled?—In that case the lord of the manor would be one of the competing interests whose claim would have to be resolved. If he felt that he could not collaborate with his

commoners about gravel, he would stake a claim for using gravel, and it would have to be resolved at the public local enquiry stage if necessary.

2303. *Chairman*: Sir George Pepler asks on paragraphs 43, 44 and 54K: 'No specific mention is made of 'recreation', but presumably the intention is to include it in relation both to compulsory acquisition and change of user?'—Yes.

2304. *Mr. Arnold-Baker*: In paragraph 43, are you not introducing a slight stick as opposed to the carrot in paragraph 42? Are you saying 'If you do not prepare a scheme yourselves the common may be compulsorily acquired'?—Yes. At the moment it seems to be common ground that commoners' rights are in one sense far more fully protected than if they were freeholders, and in another sense are so frozen that the commoners cannot even exercise them themselves. The whole tenor of our memorandum is to suggest that common land should be put on as closely similar a footing as possible to land held in severalty. Therefore the land should be open to any alternative use where merits can be satisfactorily proved.

2305. *Professor Stamp*: Is there not a weakness in paragraph 43, and still more paragraph 48, which I take together, in that precisely those commons where there was no active lord of the manor, or where there were no active commoners, would just be left; and yet they are the very ones which are really most likely to need attention in the commoners' interest? Paragraph 48, which is more explicit than paragraph 43 says:—

'Failing the preparation of a commons scheme by either owner and/or commoners . . . the land should remain as an unregulated common with its present rights, but should be available for compulsory acquisition, etc.'

It would then just remain unregulated, unused and untouched by anybody for generations, and would it not be an eye-sore and a source of danger? Has there not to be some more positive procedure to deal with those commons?—We had two points of view on that. One I have already mentioned, that it seemed to us unrealistic for anyone to prepare a scheme for a common unless and until

it had the full support of the people on the spot who would have to administer it. The second point is that we had envisaged that if there was a common in which local people were taking an interest, but which some ministry or local authority felt should be put to some use, possibly for agriculture, or for growing trees, or for housing, that common should be made available for that use. If the Minister of Agriculture wanted to make it into good agricultural land he would invoke a procedure similar to that of Section 85 of the Agriculture Act, 1947. The Forestry Commission also might use its compulsory powers, which I believe it has been reluctant to do. The local authority would have power to make a compulsory purchase order in order to build houses on it. But it would all be subject to proof at a public enquiry.

2306. But you are relying on the Forestry Commission wanting to do this, or the housing authority being interested in that. Has not the onus of taking action to be on the Commissioners for Common Land?—Theirs would inevitably be the onus. We felt that the difficulty lay in anybody in Whitehall, or even at county level, formulating a scheme for a particular common in which the owner and the other people interested were not sufficiently enthusiastic to make a scheme themselves. It is a question of the physical operation of the scheme.

2307. But take another set of cases where there is a strong divergence of view amongst the commoners themselves or between the commoners and the lord of the manor. Would not the proposals in paragraphs 43 and 48 result in nothing being done although the area concerned may be one of vital importance?—There would probably be no objection in principle to the Commission having an overriding power to prepare a scheme for a common which they felt should have a scheme, provided no initiative had come locally, and provided they had satisfied themselves that such a scheme, when prepared, could and would be effectively administered and enforced. They would doubtless only use that power in such circumstances as you have instanced, and assuming that there were circumstances in which it would be practicable to get a scheme to function.

2308. Would you add to paragraph 48: 'In the circumstances the Commissioners of Common Land would have the power to prepare a scheme'? Would that summarise what you have just said?—We should be quite happy with that, subject to the provisos mentioned.

2309. *Chairman*: May I ask a question too about compulsory acquisition? Are you assuming that while a scheme is in operation, that is during the five-year period, there would be no power of compulsory acquisition?—Any authority which felt it wanted to acquire common land should be able to look ahead five years; it would have to stake its claim before, or at the latest at, the public local enquiry when the scheme is considered. If its claim were upheld the appropriate area would be reserved for its use, and it could then exercise compulsory powers within the scheme.

2310. Are there not two ways of meeting the point? One is to say there should be no compulsory acquisition after a scheme has been approved, and the other to retain the present position whereby any compulsory acquisition (except where land is given in exchange) would have to be subject to the approval of Parliament in some way.—We felt that land use machinery in the country had so developed in the last 75 years that it should not be necessary to trouble Parliament.

2311. That is the normal case where there is no scheme. I was trying to draw a distinction between that case and the one where a scheme has been made and approved. Are you suggesting that there should be no compulsory purchase during the period of five years?—None contrary to the scheme.

2312. But if there is no scheme the land could be compulsorily acquired?—Yes.

2313. In that case would it be compulsory acquisition without recourse to Parliament?—Yes.

2314. By compulsory purchase order?—The same machinery as now applies to land which is not common.

2315. Sir George Pepler has a question on paragraph 48: 'This raises the question as to who should approve commons schemes, since it would enable the proposed Commissioners for Common Land themselves to prepare a scheme, in default. Would the R.I.C.S.

agree that all schemes, by whomever prepared, should require the approval of the Minister responsible for town and country planning, having regard to his being charged under the Act of 1943 with the duty of securing consistency and continuity in the framing and execution of a national policy with reference to the use and development of land throughout England and Wales? We have discussed this point just now.—We are in entire agreement with Sir George.

2316. On paragraph 52, who are the 'appropriate authorities' in the penultimate sentence? Do you mean the central ministries, for example, the Ministry of Housing and Local Government?—Yes. It might be that during the current five years a housing need had arisen, and the local authority wanted the scheme revised. There must be provision for revision, otherwise we shall have a new freeze-up comparable to the old. We felt that unless there were a good cause for altering the scheme it should continue to run, but with the opportunity of a review each five years.

2317. *Professor Stamp*: There is a general question arising perhaps in paragraph 53. Does the Institution envisage a scheme for every common irrespective of size? Has it considered the possibility of commons joining together, or being joined together, for a composite scheme? Some of them are very small.—Yes, it would be very happy if the area of management could be optimum, even if that meant covering more than one common. I mean optimum in the sense of the right area for a comprehensive drainage scheme, or for agriculture.

2318. Both the Royal Institution and the individual witnesses here have great experience in the management of land. Would you like to hazard a reasonable minimum size of unit at which commons should be operated?—*Mr. Fleming Smith*: Taking the other aspect of Professor Stamp's question first, I would be in full agreement with the suggestion that one management committee might be responsible for a group of commons. To take only one instance, there is a group of commons in the Lake District comprising the area of Skiddaw, and all the adjoining foot hills. It is comprised of a number of commons all subject to undefined and undetermined common rights. It would seem to me quite right

and appropriate that one management committee should be responsible for that group of commons. The agricultural interests in this area are similar in every respect, so that it is a case where one committee might manage a group of commons. Indeed one might even go further and say that the conditions are so similar in the areas of the north that one single management committee might be responsible for all the commons of a particular character in a certain county. This would ease administration and, of course, save staff. On the question of the minimum size of a common coming under a scheme, my personal opinion is that any common below an area of, say, ten acres ought not to come under the procedure which we envisage. That is my own view given on the spur of the moment.

2319. *Mr. Floyd*: Would there not be the small common in which one particular village has a high degree of local interest and where the commoners would want their own committee to run it, and in contrast the large areas, such as Mr. Fleming Smith has mentioned, which might be run together?—All the local people would want to have their own committee for the little commons.

2320. *Sir Donald Scott*: Do you really think that the idea of joint management would be acceptable to the commoners?—I certainly think that a group of commons such as I have mentioned would welcome one management committee. They themselves would in fact be quite prepared to constitute a management committee of that order, and to administer the land under the Commission's overriding control. I think it would be perfectly workable. A similar control of a group of commons was in fact tried in the immediate post-war years. It was instigated by the Ministry of Agriculture anxious to ensure better use of land for agriculture in the area, but the Ministry at that time were not prepared to allow a scheme to go forward unless it received 100 per cent. approval. Meetings were held, and perhaps 95 per cent. approval was obtained, but it was the 5 per cent. which held the scheme up, and consequently none went forward. I certainly think that a committee for a group of commons of that character would be both practicable and capable of carrying through the sort of scheme envisaged by the Royal Institution.

2321. *Mr. Arnold-Baker*: Are you speaking of commons which are contiguous or separated from each other? Would you envisage a management committee for all the commons in a county even though they were widely separated from each other?—No, I think that widely separated commons would have to have their own management committee. It is only those commons which are contiguous or almost contiguous which, I think, would require one management committee. Otherwise, I think, independent management committees would probably be required.

2322. *Professor Alun Roberts*: Would not the decision depend on geographical location? Would not any commons, to justify being managed together, have to be more or less within a natural catchment area? The perimeter would be the watershed almost invariably since the pattern of usage would have developed within that boundary?—The actual physical conditions are the opposite in the Lake District. A group would not necessarily fall into a watershed area.

2323. I agree the watershed need not be necessarily the boundary, but some other equally sound physical feature identifying the perimeter, a naturally defined area. In Wales it is the watershed that usually defines it. It may be otherwise in the Lake District but the group of commons must have identity that is recognisable geographically.—*Professor Stamp*: Would groups not be, say, Snowdonia in Wales, and the Cumbrian Mountains in the Lake District?—*Mr. Walmsley*: I think this point would probably solve itself. The people on the spot would know whether they wanted to be joined with the common over the hill or across the valley, and if they wanted to be separate they would be separate.

2324. *Professor Alun Roberts*: However the definition is drawn is it not the geographical region that is the right basis of administration? The region would be ascertained in the Lakes, in the Pennines or in Snowdonia according to usage. It would be well to proceed on the basis that a unit which usage and wealth of experience has established should be left untouched.—*Mr. Till*: It must be inevitable that a group of commons is run together. I am from South Wales

where there are many commons completely open to each other and running over several mountains. In cases like ours I think it would be much better in the commoners' interest, where the stock—sheep mainly—wander from one common to another, that the commoners should combine in one committee. This applies to all commons which are so sited that they are run together, whether they comprise watersheds, mountains or whatever it may be. The matter surely could be left to the local Sub-Commission, or whatever the body is called, and to the commoners' committee. As for the minimum size of a common, I think that, too, must be left to the Sub-Commission since commons vary so tremendously in character. I do not think one could fix 10 acres or even 100 acres as the minimum.

2325. *Professor Stamp*: Where there are contiguous commons must there not be an overriding power for the Commission to insist upon the one manor or village which would otherwise stand out participating in a commons scheme?—*Mr. Walmsley*: That is very true.

2326. *Chairman*: I have a minor point on C in the detailed procedure in paragraph 54. You refer specifically to rights of access. Were you using that phrase in the strictly technical sense? There are many commons where access is in fact exercised though there is no right to it.—Yes.

2327. Do you in fact mean any common which is open to the public, for access?—Yes, we meant *de facto* access.

2328. In paragraph F you say 'in consultation with such local interests as may be deemed to be necessary'. Does that mean that the commoners, or the owner if he prepared the scheme, would in fact decide whom to consult?—My impression is that any other parties who felt they ought to be consulted, would themselves reveal that fact.

2329. *Dr. Hoskins*: I understood you to say that although the public enquiry has to be held as under paragraph 54H, it would not be held if there were no objections to a scheme. What safeguards would there be against frivolous objections which might give rise to a great deal of expense? What safeguards are there with other public enquiries? The

frivolous objection or one with no substance might be met more often than in, say, housing enquiries.—I do not know the answer to that, but I should say that whatever rules now apply to other public local enquiries should apply to this. I am sure the point must already have been dealt with in legislation.

2330. *Mr. Arnold-Baker*: Possibly there might be some provision as to charging costs. That is always a good threat. I would say that Ministries tend to be rather pusillanimous on the subject of costs and avoid making orders as much as possible. Is that your experience?—Yes.

2331. Would you agree that when people apply for costs at an enquiry, the inspector immediately adopts a timid attitude?—I cannot recollect any instance of costs being awarded at a public local enquiry.

2332. *Mr. Floyd*: The question of costs might also be a difficult one when rights are registered. Where a man, and possibly his father before him, has exercised a common right for a great number of years, I think there will be terrific public indignation if that man says 'Everybody knows I have this right', and then is put to some cost to prove it. I do not know how in this respect, the registration of claims can be dealt with: we have met many commoners in various parts of the country, and I can imagine that if legislation provides that they should have to go to a local solicitor or surveyor or somebody and fill in a claim form, there will be a great deal of indignation. They will say 'Tom Jones, Tom Smith and everybody knows I have this claim, why should I have to go to the expense of proving it?'—They would be quite correct in making such a comment. We feel that all a commoner need do is to put his name down on the register, and it would only be if his neighbours, the other commoners, disputed his right that he would have to prove his claim. There would be no outside body putting him to the cost of proving it if all the other interested people accepted his statement.

2333. *Dr. Hoskins*: My question related primarily to objections to a scheme as formulated. It seems to me a way has to be found of preventing the most trivial objections starting an expen-

sive public enquiry. I am not sure that putting a liability on the objector to meet the costs is the right way to do it. Might it not be better to require a minimum number of names to an objection?—*Mr. Till*: The objector would then bring forward Tom Jones or Tom Smith and get the minimum number in support.

2334. That may be, but one wants a safeguard against one man starting the whole machinery. If he can find three or four to put their names under his, that is some guarantee that he is not entirely crack-brained.—*Mr. Walmsley*: Yes. Could I also make a comment on J? We have suggested here that if an approved scheme was not being worked authority should be given to proceed with it. We realise there would be great difficulties because it would mean that the people on the spot were not operating the scheme, and it would be a matter for thought how it could be enforced.

2335. *Chairman*: Does it not depend on having a good chairman or secretary of the committee in many of these cases?—Yes. The problem is that although there should be some sanction applicable if the local committee falls down it might be very difficult to apply.

2336. Would not this problem arise in cases in which, in spite of your statement in paragraph 56, the committee were not able to make a profit? Is the assumption in that paragraph that a scheme would not be prepared unless the lord of the manor or the commoners felt that they were going to get a profit out of it? Is that the reason why you assume an increase in the value of the land is to be expected?—Yes, it is self-interest that would lead to the prompt preparation of a scheme.

2337. We have had a good deal of evidence about statutory schemes where the conservators, or other authority, are finding it difficult as the law now stands even to cover their expenses, still less to make a profit. Is your assumption in paragraph 56 that there would not be a scheme at all unless there was going to be at least some profit in it?—Yes. We also assume, in paragraph 58, that the responsible committee could look to the Government for all the financial assist-

ance available to freeholders of that type of land. But for that help improvement schemes would almost certainly be uneconomic.

2338. *Professor Stamp*: Paragraphs 56 and 57 make it clear that schemes would go very much further than would be possible under existing legislation. These paragraphs seem to me to indicate in particular that if a scheme is approved, enclosure by fencing is automatic; in fact the open common land which is so much beloved by the amenity interests will disappear, to judge from the reference in paragraph 57 to 'liming, draining, fencing, improvement of leys, or the extinguishment of rights'. Would not common land in fact be superseded by land which would be enclosed but not held by individuals?—Certainly not. It is not necessary for me to assure the Commission that the Institution holds no brief for any particular interest, be it agriculture, forestry, housing or amenity. What we have tried to do is to set the stage for those who are taking a part, or prepare a ring in which the contestants can have a fair fight. A committee drawing up a scheme for any common would do so with the guidance and advice of the Commons Sub-Commission, whose membership would almost inevitably include members of amenity bodies. A scheme would never get even to the stage of a public local enquiry unless it had sufficient safeguards for access and amenity which were likely to commend themselves to the inspector of the Ministry of Housing and Local Government. There could be no hope of a scheme going through if it sought to convert into private property what in the national interest should be amenity land.—*Mr. Fleming Smith*: I agree entirely with what Mr. Walsmsley has said. I think that it has always been envisaged by us that all the interests which Mr. Walsmsley has mentioned would be very fully considered both in the actual preparation of the scheme, and in its carrying out.

2339. *Chairman*: Have you in fact provided throughout for these various interests to come in?—*Mr. Walsmsley*: We have tried to do so.

2340. *Mr. Arnold-Baker*: Where public access has the effect of reducing the profit to be obtained from the land, as

one can imagine may happen in the neighbourhood of some of the larger built-up areas, do you envisage some kind of grant or contribution from local authorities to make up the difference?—Yes, I believe they already have authority to make contributions under existing legislation.

2341. Do you want that to continue?—It would be essential. It might be essential for the preparation of a scheme, and even more essential for its implementation.

2342. *Mr. Floyd*: Referring to paragraph 58, if commons are going to be able to benefit under approved schemes from Hill Farming Grants I think it would be useful for the Commission if the Institution would give us some indication of how they think tenant right matters might be dealt with. Supposing a commoner has subscribed to an improvement scheme, and then has to relinquish his farm, what happens about the money which he had put into the improvement of the common and from which he has received no benefit? It is perhaps a technical point but one which you, rather than anyone else, can deal with and is something to be thought about.—The person who would have to put his hand into his pocket would in fact be the freeholder of the land to which the common rights attach. The committee would indent on the freeholder for the money. The freeholder might well say to his tenant 'You are going to get the benefit of this, but I will find the money if you will pay the interest in the form of increased rent'. It would be for the landlord of the holding to make his peace with his tenant on that, and it would not be the concern of the commoners' committee.

2343. That may be the legal position, but it is not what happens in practice. We were thinking of the practical point—especially in the Lake District where the commoners might be asked to subscribe towards fencing and draining. In special circumstances a man may have to give up the farm to which his common rights were attached. I only want to leave the problem for the Institution to think about, because I am sure they are more likely to be able to advise on it than any other body.—I am sure that if later on legislation is produced to implement our

ideas we will grapple successfully with that particular problem.

2344. *Professor Stamp*: There is one point on Annex I on which perhaps a little further explanation would be helpful. That is the distinction between 'commonable animals' and other animals which are not 'commonable' but are nevertheless depastured, as of right, on some commons.—*Miss Rutland*: I

will reply to that question on paper, if I may, and will let the Commission have a written note.*

Chairman: May I thank you for the extremely valuable discussion we have had this morning on the basis of your very well thought-out proposals.

* The written reply has been printed as Annex II to the Institution's Memorandum of Evidence.

(The witnesses withdrew)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

18

Wednesday, 14th November, 1956

WITNESS

Chartered Auctioneers' and Estate Agents' Institute



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Member of the Agricultural Committee

MR. J. MUIR WATT, M.A.
Deputy Secretary

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 14th November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. T. G. C. EVANS, O.B.E., T.D., J.P., F.L.A.S. MRS. F. B. PATON, J.P.

DR. W. G. HOSKINS, Ph.D. SIR DONALD SCOTT

MR. ALAN LUBBOCK, J.P., D.L. PROFESSOR L. DUDLEY STAMP, C.B.E.
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence submitted by the Chartered Auctioneers' and Estate Agents' Institute

Introductory

1. The Council of the Chartered Auctioneers' and Estate Agents' Institute are pleased to accept the invitation from the Royal Commission on Common Land to submit a written memorandum of evidence on the subject matter of the Commission's terms of reference, in so far as it falls within the professional experience of members of the Institute.

2. Perhaps the most striking feature of the common lands in England and Wales is their immense variety. Not only do commons differ from one another in the nature and scope of the common rights which exist over them, but they differ widely in the effects which such rights have on agricultural practice and production and on land utilisation generally. No two commons are quite alike, and it is thus difficult to make generalisations. The problems presented by common land on a Welsh mountain-side, for example, are very different from those presented by commons in, say, rural parts of the Midlands, or, again, by metropolitan commons or commons in an urban district. These diversities reflect both varying physical conditions and the diverse histories of individual commons, dating back sometimes to their origins in the manorial system.

3. In spite of this diversity it appears to the Institute to be possible to divide commons into three broad categories for the purposes of its evidence. These three categories are (a) metropolitan commons within the meaning of the Metropolitan Commons Acts, 1866 to 1898, and commons outside the metropolitan area which are regulated, or adapted for regulation by, schemes under the Commons Act, 1899; (b) common lands which, owing to the special features of their geographical position or for other reasons, are probably being utilised to at least as good advantage now as they would be if they were not subject to common rights; (c) common lands which could be materially better utilised if they were not subject to common rights.

Metropolitan Commons and Commons Regulated under the Commons Act, 1899

4. This first category of commons covers those where the principal consideration is to make provision for the exercise and recreation of the inhabitants of the neighbourhood. Although both the Metropolitan Commons Acts and the Commons Act, 1899, contain provisions for the protection of the owners of manorial and common rights, it is clear that the machinery of the Acts is intended to be used in cases where such rights retain little agricultural significance but where the public interest in the regulation and management of the common is substantial. For example, there are commons near towns over which rights of pasturage may technically continue to subsist but where, owing to the development of the surrounding areas, they have lost their practical value. On the other hand the public in such cases have an interest in the proper management of the common, in the repair of footpaths, drainage, preservation of trees and shrubs, and, generally, in its maintenance and improvement as an open space for recreation. As far as the Institute is aware, commons of this type give rise to no special problems, and, subject to the point mentioned below, the Institute has no observations to make in regard to them.

Local authorities might sometimes consider whether, instead of accepting it as axiomatic that commons near towns should be scheduled as open spaces in development plans, they should not be utilised for necessary housing development. The needs of the local inhabitants for open spaces must, of course, be taken into account, but there appears sometimes to be an undue reluctance on the part of local authorities to take any part of a common for housing. This may mean that, sooner or later, other land which the community can less easily spare, such as good farm land, is taken for housing development.

Commons which are being utilised to Good Advantage

5. It appears sometimes to be suggested that practically all land over which common rights are exercised would be better utilised if it were freed from such rights. The experience of members of the Institute does not support so wide a proposition. There is some common land which, as far as can be judged, is being used at least as advantageously as it would be if the common rights over it were abrogated.

For example, in certain parts of South Wales and Monmouthshire, such as Brecon and Radnor and the north of Glamorgan and Monmouth, there is a good deal of common land on the tops of mountains which is used for grazing sheep by the occupiers of hill farms. Similar conditions exist in other places, such as parts of Cumberland and Yorkshire. In the main, full use is made of these hill grazings, and where this is so any interference with the system of common rights would be attended by positive disadvantages. In many cases the existence of these rights is essential to the livestock husbandry of the farms to which the rights are appurtenant. If they were denied the common grazing facilities in question the husbandry of the holdings would be thrown out of balance, with adverse effects upon their production. Indeed, in some cases the producers would be put out of business altogether, as they rely on their common grazing rights to enable them to maintain quite large flocks of sheep although their enclosed holdings are small. Further, as conditions on the mountain vary with climatic and seasonal changes, hill sheep need to have a certain amount of freedom to range over the grazings in search of the most suitable spots without being hindered by the impediment of enclosure. In cases such as these the wise course is clearly to leave the present arrangements alone. It is not suggested, however, that all hill grazings fall into this category. In some cases the advantages of the division into severality of land now used in common for grazing may outweigh the disadvantages. In the opinion of one of the members of the Institute this is so in the case of the large area of Crown common just over the Montgomeryshire border in Radnorshire. This land appears to be capable of reclamation and of being improved by suitable treatment to an extent which would at one time have been thought impossible.

Commons which appear to be utilised to good advantage at present are not confined to hill grazings. There are, for example, commons in the Midlands which seem to be satisfactorily utilised, such as the commons in Huntingdonshire, along the Ouse Valley, near Huntingdon, Godmanchester and St. Neots.

Commons which are capable of Better Utilisation

6. There is no doubt that in a good many cases the existence of common rights does prevent the land from being used to the best advantage from the point of view of agriculture. This is a matter of concern in the circumstances of today. The capacity of common land to contribute towards increased food production was demonstrated when about 20,000 acres of commons were requisitioned during the war. About 10,000 acres have been de-requisitioned, all of it, as the Joint Parliamentary Secretary to the Ministry of Agriculture told the House of Commons during the debate on derelict common land on the 14th May, 1954, producing more food than before it was requisitioned. In many cases these de-requisitioned commons have subsequently deteriorated from an agricultural point of view. An example not far from London may be given. Tyler's Common, Upminster, was ploughed up, cropped and re-seeded during the war. As a result of these operations it produced excellent hay crops. An attempt to retain the benefit of the war-time improvement, with some modification of the old common rights, met with a public outcry and had to be abandoned. The common is now rapidly reverting to bush and hramble. Unfortunately, even operations which are clearly for the long-term benefit of the owner of the soil and the commoners cannot be undertaken unless all those who have any rights in respect of the common can be traced, are of full age and capacity to consent, and do in fact consent to the operations. An example of what can be done by co-operation, although the subject-matter is not a common in the accepted sense, is the case of Nazeing Common, Essex. This is land which was held in common by the owners of various properties in the parish. It was ploughed up and drained during the war, and subsequently the owners joined in promoting a scheme which enabled the land to be maintained at full production and at the same time safeguarded the owners' rights of grazing. Before the war this land contributed little to production. In the absence of such mutual agreement, however, a common cannot be ploughed up and re-seeded, however desirable this may be. The multiplicity of manorial and common rights which may obstruct agricultural production can be overridden by enclosure. Enclosure, however, under the Inclosure Acts, 1845 to 1882, is a long, difficult and cumbersome process, which has been little used in recent times. Some simpler machinery would appear to be needed to enable land to be freed from common rights which are hindering its proper utilisation, but the history of Enclosure shows that any procedure which is established must command confidence in its fairness and justice.

7. The Institute suggests that it should be made the responsibility of the Minister of Agriculture, Fisheries and Food to certify whether particular areas of land which are subject to common rights are, by reason of such rights, producing materially less than they could reasonably be expected to produce if such rights did not exist, and whether it is desirable in the interests of agricultural production or afforestation that arrangements should be made for the better utilisation of such land. Such a certificate would only be granted after full opportunity had been given to all concerned to put their views before the Minister. Once a certificate had been given, a reasonable time would be allowed, possibly a period of years, within which it would be open to the persons interested in the land, whether as owners of the soil or as commoners, to submit to the Minister an agreed scheme for its effective utilisation. Such a scheme might provide for the vesting of the land in one person, or its division between several persons, discharged from the rights of the commoners, on payment, where appropriate, of compensation to the latter. The Minister would have to approve the scheme as a suitable method of dealing with the land, and his order would give legal effect to the arrangements. It might be necessary to give the Minister, or the Courts, power to consent to the arrangements on behalf of interested persons under incapacity, such as infants, if satisfied that such consent could properly be given. If the interested persons are unable to reach agreement within the time allowed, it is suggested that the Minister should have compulsory powers to enforce a sale of the land, and the apportionment of the proceeds, subject to expenses, among the persons in question. The purchaser of the land would take it free from the rights of common, which would be extinguished. He would, of course, become subject to the obligation to maintain proper standards of good husbandry and good estate management which are set out in Part II of the Agriculture Act, 1947. A precedent for the sale of a common and the apportionment of the proceeds

of sale among the interested persons would be found in Section 4 of the Inclosure Act, 1852, and Section 9 of the Inclosure Act, 1859. It is suggested, however, that the Minister should be empowered to order a sale without the consents specified in Section 4 of the 1852 Act, and that the limitation to 50 acres contained in that Section should not apply. There should be full opportunity for interested persons to make representations to the Minister before the order is made. Whether, and if so to what extent, and in what form, there should be a right of appeal from the Minister's decision are matters which would require careful consideration.

Public Rights of Access

8. Cases are known where the most efficient agricultural utilisation of common land is hindered, not by the exercise of rights of common, but by the exercise by the public of their rights of access to such land for the purpose of recreation. The importance of preserving the rights of the public for these purposes must be balanced against the importance of maximum agricultural production. It may be possible in some cases to limit the exercise of the rights of members of the public, without inflicting undue hardship upon them, in such a way as to reduce the adverse effect upon production. There are in existence certain statutory powers of limitation, and it may be that they are insufficiently invoked. If necessary, however, they should be strengthened.

Conclusion

9. The Institute hopes that the Royal Commission on Common Land may find these observations of some assistance. If there are any other matters upon which it is thought that the experience of members of the Institute may be helpful the Institute will be pleased to consider them. It has not been possible in this memorandum to deal in detail with the circumstances of particular commons. If the Royal Commission should require more concrete information to illustrate the views which have been expressed the Institute will do its best to provide such information by means of oral evidence.

Examination of Witnesses

MR. A. H. HALLS, F.R.I.C.S., F.A.I., MR. ERIC C. SPENCER, M.B.E., M.A., J.P., F.R.I.C.S., F.A.I., MR. M. F. J. BATTING, F.R.I.C.S., F.A.I., MR. T. WILSON WRIGHT, F.R.I.C.S., F.A.I., and MR. J. MUIR WATT, M.A., on behalf of the Chartered Auctioneers' and Estate Agents' Institute.

Called and Examined.

2345. *Chairman:* We are very grateful to the Institute for having given us its memorandum. My first question is on paragraph 3. I appreciate that any classification of commons is likely to be difficult, but I am not quite clear why you class commons, in respect of which schemes under the Commons Act, 1899 are possible, with those governed by the Metropolitan Commons Acts. Cannot all commons be regulated by schemes under the 1899 Act?—*Mr. Halls:* That is true. We felt that those Acts envisaged the promotion of the general, or public interest, amenity and so forth. From that angle they seemed to be linked together.

2346. Would you agree that even where commons are in fact used by the public, there is in many cases considerable agricultural use as well?—Yes,

indeed. We have approached the problem mainly from an agricultural point of view. Our work brings us into contact with many interests in land, and we feel that in certain instances common land could be better utilised. I think that everybody is anxious that there shall be a full use, in the national interest, of the whole of the land in the country. We felt that our evidence might perhaps be helpful to you on the agricultural side; you would be able to balance our views against the others, which we do appreciate exist, and ought to be protected.

2347. Would you say that there is a great shortage of available land, and everybody wants to use what little there is?—Yes, exactly.

2348. Turning now to the last sentence of the first sub-paragraph, of paragraph

4, we have had a certain amount of evidence that even where there are schemes under the 1899 Act, they are very often difficult to operate. This may be because when a common is not grazed, or is under-stocked, there is often very considerable cost involved in making it fit for use by the public. Have you had any experience of commons no longer being used for grazing where the expense involved in clearing scrub, and that kind of thing, is so enormous that they tend to go back to forest, and are not effectively accessible to the public?—Yes. I know of a common—not a very large one—in Essex, where that is happening at this very moment. It is Tyler's Common, near Upminster, referred to later in our memorandum. It is rapidly going back to scrub and weed.

2349. Is that a common regulated by a scheme under the 1899 Act?—I do not think so. I believe the County Council own the manorial rights. It was requisitioned in the war. The County Council endeavoured to let it after the war, but there was a great public outcry and the fence was taken down. As a result the common is now going back.

2350. *Professor Stamp*: Also on paragraph 4, what do you understand by the proper management of a common? Would an arrangement between the lord of the manor and the commoners, for the normal utilisation of the common, in fact cover the items which you have mentioned later on in the paragraph?—I would have thought that the proper management of the common means that the land is being utilised to the fullest extent, having regard to all the interests which were concerned in that particular common.

2351. But in the case of a metropolitan common, or a common near a town, an arrangement between the lord of the manor and the commoners for its fullest utilisation agriculturally would not meet all these requirements which you have set down, would it?—I agree it would not.

2352. So what form of management do you envisage in that paragraph?—It must depend very largely on the particular circumstances. I would have thought that management of a metropolitan common, or a common near a town, should be so arranged that it gives the

public, who have rights over it, the best possible benefit from it; but if there is any agricultural use, that use should not be forgotten or abandoned.

2353. In that case, who should manage the common?—I would have thought, speaking off the cuff, the local authority.—*Mr. Watt*: We had in mind that it would do so under a scheme under the 1899 Act, in which the matters of footpaths, drainage, preservation of trees and shrubs, etc., are usually included under the local authority's management.

2354. Do you then envisage taking such commons out of the management of the lord of the manor and the commoners, and handing them over to a body, perhaps a local authority, with wider interests and powers?—We had in mind management through the existing machinery of the Commons Act, 1899, not proposals for any new kind of machinery.

2355. Would you agree that proper management, in that context, does mean more than just management by the lord of the manor and the commoners?—*Mr. Halls*: Yes.

2356. *Mrs. Paton*: You suggest in the last sub-paragraph of paragraph 4 that sometimes local authorities are reluctant to take any part of a common for housing. Is that because local authorities are in great need of land for open space in view of the ever increasing need for public recreation?—*Mr. Batling*: I can cite the case of Kingwood Common in Oxfordshire, which was a Polish hutted camp during the war. The soil is very poor and gravelly. The local council wanted to take part of the common for housing but met with opposition, and, as a result, they have built on agricultural land. As far as I am able to judge, Kingwood Common, or part of it, could have been taken without spoiling the amenity of the district at all, especially as within a mile there is quite an attractive common known as Peppard Common.

2357. *Chairman*: Were the local council deterred merely by public opinion, or was it because the opposition might have been carried up to Parliament?—They did so just because of public opinion.

2358. Not because of the necessity to use the Special Parliamentary Procedure?—No.

2359. You have said that you have considered commons primarily from the point of view of agricultural utilisation, while appreciating that there are a great many other competing claims besides agriculture. In paragraph 5 you say at the end of the first sub-paragraph: 'There is some common land which, as far as can be judged, is being used at least as advantageously as it would be if the common rights over it were abrogated.' Is there very much common land being so used?—*Mr. Halls*: I think that there is some such land in the Welsh Hills.—*Mr. Wilson Wright*: Yes, the Brecon hills. The evidence we can gather leads us to the conclusion that they are now being used to the best advantage, in that there is very little potentiality for reclamation.

2360. Is there any sort of organisation, other than the lord of the manor and the commoners, to improve the land?—I do not know of any. I should imagine that it is land belonging to a lord of the manor, on which only tenants of the particular estate have the right of turn-out.

2361. I have been told that although many commons can be used as they are, if they were in private ownership they could be very considerably improved.—That is true of common land in north Radnorshire; and the Crown common land there could undoubtedly, in my opinion, be greatly improved.

2362. I understand that modern techniques make it possible to improve even poor land fairly easily. Is not improvement more difficult with common land than with ordinary private land?—With regard to the Brecon hills, speaking from the little I know about them, the slopes for one thing are too sheer for reclamation, rather like some of the hills on the southern boundary of Merioneth. Therefore, as the tenants bordering on that land have the right of turn-out, I consider that the land is already being used to the best advantage.

2363. *Mr. Evans*: Would not fencing, and the like improve the management possibilities of such land?—Yes, it would. But against that most of the rights of turn-out are limited to a certain number of sheep. There is always, of course, the selfish tenant who puts a

greater number of sheep on the hill than he is entitled to, but with the cost of fencing—even with a grant under the Marginal Production Scheme—I doubt whether there would be any great benefit, if the land could not be reclaimed as well. I would not recommend fencing without reclamation.

2364. Would you agree though, that even where common land is being used for grazing, the maximum benefit cannot be obtained unless there is adequate fencing?—*Mr. Halls*: I would think that was so generally speaking.—*Mr. Wilson Wright*: I am quite sure that far more could be got out of the Crown common land I have mentioned if it were fenced and partitioned amongst the people who now have common rights. If that land were fenced, in which case it would be eligible for a grant under the Marginal Production Scheme, drained and reclaimed thoroughly, it would be far more valuable than it is now. Unfortunately, as far as I can find out, there is no maximum number of stock which any one adjoining farmer may turn out.

2365. *Chairman*: Is this land not subject to the normal doctrine of levancy and couchancy which limits the number of animals that can be pastured?—Not as far as I can find out. No maximum number applies, so that the first man to turn up, puts out an excessive number of sheep, and if he has good wethers keeps out those of his neighbours.

2366. *Sir Donald Scott*: Could those hills also be improved by a certain amount of afforestation?—Some of them, yes. With regard to the land in north Radnorshire, in my opinion it would be essential, in order to make a thorough job, to put up shelter belts. There would have to be some afforestation in that respect. That land is very suitable for reclamation.

2367. *Chairman*: We have been considering examples in Wales, so far. Are there any similar ones in England?—*Mr. Halls*: I know of some comparatively small areas in East Anglia, which are being effectively grazed now, and might perhaps be of better quality still if more money was spent on them. But I would not say that they are not being used now to their reasonable capacity.

2368. Are there in fact very few commons generally speaking which are being

fully used? The common land in Radnorshire could apparently be improved if something were done to it, as could these small areas you have just quoted?—Yes.

2369. Towards the end of the second sub-paragraph of paragraph 5, you seem to assume that there are really only two ways of dealing with the situation, to allow the common to be used as it is at the moment, or to inclose it and have what you call division into severalty. Is it not possible, in many cases, to have some sort of scheme organised by the lord of the manor and the commoners, either under special statutory powers or simply because they have agreed, whereby the land can be improved?—I think that is true. There are some cases that could be dealt with in one way, and there are other cases that could be dealt with in another way; one cannot lay down a hard and fast rule as to how each case could be dealt with.

2370. Would you agree then, that it is not a stark choice between the existing system and division into severalty?—I agree. It depends on the particular circumstances. To go back to the Welsh hills, the common land in north Radnorshire would be dealt with differently from the land in the Brecon hills.

2371. In paragraph 6, you say that the owners of Nazeing Common joined in promoting a scheme which enabled the land to be maintained in full production. Is the land fenced?—The boundary fences of the area do not actually belong to the land. Might I be allowed to describe it very shortly, because it is interesting and illustrative? The land, about 500 acres in extent, was at one time owned, subject to the common rights, by the lord of the manor. In the 17th century the lord conveyed four-fifths of the common to the freeholders of various properties in the parish, and retained one-fifth for himself. It was then controlled by a private Act, of I think, 1778, giving trustees power to regulate the common and to manage grazing. In 1939, the grazing was very rough. The common was requisitioned in the war, ploughed and grew some very good crops; towards the end of the war the trustees, realising that the land would be derequisitioned, set about seeing how they could take the best advantage of it. In the upshot they promoted a further

private Act in 1947 which gave them powers to let or farm it, always retaining a sufficient area of land to provide for the public grazing of those entitled to depasture. Today it is all let, and farmed. In 1939 the number of animals depastured was 6 horses, 41 cattle, 118 sheep, and 1 donkey. In 1956, the number of animals depastured by those entitled is 30, and although 35 acres are kept back for this purpose the area is too large. As I see it, if the trustees had not done what they did, the whole of the common would have been under grass, and would be going back rapidly, even with 30 head of cattle on it.

2372. Was there any opposition to the private Bill?—Yes. The Essex County Council opposed it.

2373. How much did the Act cost?—I think it cost somewhere between £1,500 and £2,000.

2374. Have the trustees been able to get that back?—They provided for that. They accumulated their funds from the low rent which was paid during the war years. They were therefore in a position to take action having realised the potential of the land.

2375. Were they able to do so, because the land had been requisitioned during the war, and they received a rent? Would they have had the money otherwise?—No.

2376. Does not that rather lead to the suggestion that the last sentence of paragraph 6—'Some simpler machinery would appear to be needed to enable land to be freed from common rights . . . '—might contain an alternative? Is some simpler machinery also wanted to enable people to organise schemes of this kind for cultivation, the common rights still being maintained?—I agree. I should point out, though, that in the particular case of Nazeing Common, the land is owned in common. There is a slight difference.

2377. Is it actually common land?—It is not quite comparable; but it seemed to have some bearing on the problem before you.

2378. *Professor Stamp*: In the very first sentence of paragraph 7, it says 'the Minister of Agriculture, Fisheries and Food to certify whether particular areas of land which are subject to common rights. . . .' What procedure do you

suggest the Minister should follow before issuing his certificate?—We want, in a very general way, to place common land in rather the same position as other land in the country. If the people with interests in common land are not acting in accordance with their responsibilities, the Minister should be able to do certain things. It is true that on occasion, commoners may want to do something to their common, but perhaps one or two people stand out. We felt that we wanted some enabling machinery to start the ball rolling.

2379. Would it not be necessary for the Minister of Agriculture to institute a register of commons?—We felt that in the Agricultural Executive Committees offices there would surely be information available about the various commons.

2380. Do you envisage, then, some form of register or survey of common land as a first step?—Yes; but I do not think that we feel that a complete register of everything in the country is necessary, before any one makes a move anywhere. Some may be perfectly all right, and could not be improved.

2381. *Chairman*: It has been put to us rather strongly by other witnesses that the County Agricultural Executive Committees are not the appropriate bodies for this purpose, because they are concerned only with the agricultural use of commons, and there are so many other uses to which a common might be put. Do you agree with that view?—*Mr. Wilson Wright*: That is why we suggest that it should not be necessary to register all the common land in the country. The Agricultural Executive Committees should know which land is capable of being used agriculturally, as against common land used for recreational purposes only.

2382. Do you think that the agricultural use should have priority over other uses, forestry, for example?—Yes, if sniftable. That is my personal view.

2383. Supposing that the Minister of Agriculture, acting on the advice of the Agricultural Executive Committee, says that a particular common should be improved agriculturally, and the Minister, acting on the advice of the Forestry Commission, says that it should be used for afforestation, who is to decide between the Minister and himself?—

There would be cases where commons could be used for both forestry and agricultural purposes.

2384. The view put to us by what I call the amenity societies is that all common land should continue to be accessible to the public, and that any use of the land which deprives the public absolutely of access, is objectionable on that ground.—I think that is too sweeping a generalisation. There is plenty of common land in Wales, which the public never use because it is far too remote.

2385. On the contrary, they say the more remote the better from the point of view of the rambler.—*Mr. Halls*: It is surely not completely inconsistent for the public to have access and derive benefit from these lands, and for them nevertheless to be used for agricultural purposes. The one does not completely rule the other out.

2386. Ought common land, then, to be ploughed up or fenced?—*Mr. Batting*: You probably know Maidenhead Thicket. Part of that was cultivated during the war, and I think it is still under cultivation, but there is ample land left for recreation. The Thicket is quite a big area, of course, and I do not think that the public have been interfered with in any way by the cultivation.

2387. I have not seen the Thicket, but is it not a case where, in fact, the public is now being kept off by brambles, thickets, and so forth?—They still get through though.

2388. *Professor Stamp*: You say, in the middle of paragraph 7: 'vesting of the land in one person . . . discharged from the rights of the commoners, on payment, where appropriate, of compensation to the latter.' Could you give us any idea of the value you attach at present to the rights of the lord of the manor?—*Mr. Halls*: Although I personally was not concerned with it, my firm was concerned with an auction sale of lordships of manors, and if it would be of interest to the Commission I can let you have copies of the sale particulars. I can also let you have a note of the prices which the various lots realised, if it would be of interest.

2389. *Chairman*: I think they will be very helpful to us, I understand one of the catalogues ran through four editions—why was that?—Previous editions

were completely sold out. I think the people who organised the sale did not visualise at the beginning that it would meet such a demand. I think many people bought catalogues merely to read them.

2390. *Professor Stamp*: It is a rather interesting hobby, the collecting of lordships of manors. Are there not a few people in this country who practise it? Was not this a sale of one of the most famous collections?—Yes, Mr. Beaumont's collection.

2391. *Chairman*: What do you sell when you sell the lordship of the manor?—I am afraid I cannot give an adequate answer as to what is included in the interest of a lord of the manor. I did not personally handle this particular sale and it would be difficult to generalise.

2392. Were not those lordships of the manors bought for their antiquarian interest, rather than for their genuine agricultural interest?—I think that is true. Several people were interested in the documents which accompanied them.

2393. *Professor Stamp*: Are there documents which attach to the lordship then?—Documents and, of course, a certain prestige value.

2394. In this case did the sale of the lordship of the manor include, also, any rights over any actual land?—I think I am correct in stating that it included such rights as the lord of the manor possessed.

2395. Suppose he had no rights remaining over any land. Was there still something to sell?—Apparently some people thought so.

2396. *Mr. Evans*: Where there is timber, might that not be of considerable value?—The purchaser would have the timber. There may be wayleaves in some instances. I am not quite sure about sporting rights.

2397. *Professor Stamp*: In certain cases, was the lordship of the manor sold as a title, but with no land at all?—I think that is so.

2398. *Mrs. Paton*: Would you then say that in some cases it is purely a title which is bought, so that the purchaser can say 'I am the lord of the manor'?—In some cases, yes.

2399. *Professor Stamp*: Can the Institute give any estimate of the value (32762)

of the rights of the lord of the manor, where these rights are exercisable? I ask that question because if a common is to be inclosed the lord of the manor has to be compensated. When selling a property, which includes the rights of a lordship of the manor, members of the Institute will surely have some idea of what those rights are worth.—Without in any way trying to evade the question, I think it is a most difficult one to answer. So much depends on the particular circumstances of the case. I think it is almost impossible to answer the question without having the actual details of the particular common.

2400. *Mr. Evans*: But would you agree that in some cases the financial value might be quite considerable?—It might, yes.

2401. For example, rights over a common with some good stands of mature timber, and perhaps also valuable mineral rights.—Yes, and there might be valuable sporting rights.

2402. *Chairman*: I see that the income of the first manor listed in the sale catalogue is described as follows: 'Income in this manor is derived from, first, two wayleave agreements, with Eastern Electricity Board, with rents totalling £1 16s. 6d. per annum, and one with the Postmaster-General in respect of 17 posts with associated stays struts, at an annual rental of 17s. Secondly, rent for grazing on the Heath, £5 per annum having been paid for this up to a few years ago. It is not now let. The right to let the grazing is subject to the rights of commoners, so far as they can be shown to exist, but no right to graze has, to the best of the vendors' knowledge, been claimed by any commoner since the Manor was purchased by the late Mr. G. F. Beaumont in 1906. Thirdly, payments from time to time of £7 by a travelling Showman for the Vendors' consent to placing his roundabouts and sideshows on part of the Heath, such consent being given after consultation with the Police, the Rural District Council, and the Chairman of the Parish Meeting. Fourthly, sporting rights over the Heath have from time to time been let, but they are not let at the present time.' How much did this manor realise?—£360 only, so that you can see that the income is very small.

2403. *Professor Stamp*: Would you agree then, to sum up, that there would

be some compensation payable to the lord of the manor, but that it would be a very variable amount?—Yes, certainly. The lord's rights clearly have some value in the case the Chairman has cited, but they would vary enormously. If something is taken away from the lord of the manor, we hold the view of course that he should have proper compensation, the same as anyone else.

2404. To take a different point, when you, as auctioneers, put a manor, with the rights of the lord, up for sale and the whole is purchased by a local authority, what does the local authority buy? Do all the rights of the lord of the manor then devolve upon the local authority as purchaser?—I think so.

2405. So that the local authority, or it may be the Minister, then becomes the lord of the manor. In that case is the lordship of the manor, as a title, extinguished?—I am not certain whether it would be or not.

2406. Take the difficult case where a county council has purchased a tract of common land at public auction. Suppose the county council claims that the vendor is still the only lord of the manor and should be treated as such, but the vendor claims that he is no longer lord of the manor. From your experience as auctioneers, who do you think is right?—I personally would not care to venture an opinion.—*Mr. Wilson Wright*: Probably, the Chairman of the County Council becomes the lord of the manor.

2407. In one case near London, the Clerk to the Council assumed the title of lord of the manor, and put up notices as such. Do you think he was justified in doing so?—I should have thought the Chairman of the Council was more entitled to the honour.

2408. *Chairman*: Is not the point that the mere conveyance of the land would not convey the lordship? The fee simple merely is conveyed. Possibly in the case which Professor Stamp has in mind, the conveyance was merely of the fee simple.—*Mr. Halls*: Yes, probably it was subject to the rights of the commoners.—*Mr. Batting*: I think there are many commons where the lord of the manor cannot be found today, and the whole situation has altered with his disappearance.

2409. *Professor Stamp*: Do members of the Institute, in certain parts of the

country, handle auctions of stints, sold quite apart from any land?—*Mr. Wilson Wright*: I know of only one case in south-west Wiltshire, and there the annual value of the stints depreciated gradually over the years.

2410. *Chairman*: Is that because the land was over-grazed?—No, rather because a main road ran through it.—*Mr. Spencer*: But I think it is fair to say that that would not apply in every case. In some parts of the north Midlands and the North, gates, as we call them, are very saleable. Some of them are well managed, looked after, and enclosed; some are not, of course.

2411. *Professor Stamp*: Can they be sold to any purchaser who bids, independently of whether he owns land or not?—Yes. I have not sold any, myself, but I know one firm which holds a sale of gates; anyone can buy them. The right entitles the owner to have heasts on a piece of land.

2412. Are the rights sold in perpetuity, or at least until they are sold again?—No. They are sold yearly.

2413. Is there such a thing as a sale of stints in perpetuity?—I have not heard of one.

2414. *Chairman*: I should now like to turn to an entirely different question. From your experience, could you estimate what effects the inclosure of a common would have on the value of property in the neighbourhood? When property is advertised, the fact that it faces or adjoins a common is often put forward as a feature enhancing its value. In paragraph 7 you talk of eliminating commons. What effect would that have on the value of adjacent property?—*Mr. Halls*: There again, I think it depends on the circumstances. I can think of a particular case where common land which was properly farmed under requisition during the war has now been returned to its previous status. If I had property adjoining I would much prefer to see the common as it was during the war, properly looked after and tidy, than to see a lot of dustbins and litter, as there is now. On the other hand, a property may adjoin a common so that people can walk and enjoy an unrestricted view and an unrestricted right of passage, and in that case the proximity of the common would prob-

ably help the sale. But it is awfully hard to lay down any hard and fast rule.

2415. If there were inclosures as you suggest in paragraph 7, do you envisage that there would be any claims by property owners for compensation for loss of amenity?—I do not see how they could have any claim, unless they had lost some definite right.—*Mr. Spencer*: There could very easily be a feeling that claims ought to be allowed. For example, if, in the case of Wimbledon Common—a very pleasant open space from the point of view of people with property adjoining it—buildings were permitted on sites opposite the existing houses, I feel that the owners of these would certainly think that they had a claim to substantial compensation. But there are open spaces or commons in other parts of the country where no damage at all would be done by inclosure and development. All these cases would have to be judged on their merits, but there could in some cases be a very real feeling that a loss had been inflicted.

2416. *Mr. Evans*: Although there might not be any legal basis for any claim?—Yes.

2417. *Dr. Hoskins*: Is there any real distinction between losing amenities and views over a common, and losing amenities and views over farm land which is submerged in a housing estate? One regrets the change, but does not expect to be compensated.—*Mr. Batting*: I can only think that where a purchaser bought a property facing a common, he did so thinking that the common would always be open land.

2418. But have not many people bought private houses, thinking that farm land at the back of them is going to remain open, only to be disappointed?—Yes, but I think in most people's minds there is a little more risk with farm land. A man buying land overlooking a common would feel that the land would always be open.—*Mr. Spencer*: I confirm what Mr. Batting has said. People who buy land overlooking farm land realise, if they have any sense at all, that there is a chance that the user might be changed some time, but I think the general opinion of uninformed people, and perhaps of well-informed ones, is that, if they buy a house overlooking common land, the view is safe for ever.

2419. *Chairman*: Do they regard a common as being a public open space for ever?—Yes.

2420. This leads on to the use of compulsory powers. The powers which the Minister of Agriculture already possesses in respect of private land have given rise to a great deal of controversy. With commons there seems to be an added danger from the vast public opinion, which is traditionally concerned with them. Have you had experience of objections being raised to the use of compulsory powers over commons—during the war, for example?—*Mr. Halls*: During the war I think people had brought home to them the necessity for the full use of land. But, of course, there is a great difference of view in time of war, and in time of so-called peace.

2421. Do you not think that the agitation which sometimes arises over the use of compulsory powers in respect of private land would be even greater if a Minister were enabled to use such powers in relation to common land?—I think that is probably true. But, surely, someone should be in a position to ensure in the public interest that there is the fullest utilisation of land, of which we are so very short.—*Mr. Spencer*: In another connection we made representations to the Minister on this subject. We feel Ministers need not invariably be frightened of press criticism, which is not always well-informed on such matters as this.

2422. Do you mean that some of the agitation against compulsory powers is purely artificial?—Yes. The great amount of professional opinion was that the Minister of Agriculture was absolutely right in what he did in the case I am referring to and this view would have been supported by most knowledgeable people.

2423. Paragraph 8 raises the thorny question of rights of access. Do most people, certainly most people in towns, assume that they have a right of access on to the commons although usually they have no such right?—*Mr. Halls*: Yes.

2424. You suggest in paragraph 8 that it may be possible, in some cases, to limit the exercise of the rights of members of the public without inflicting undue hardship. Do you mean by putting up fences?—In particular cases perhaps, where

fences would not really affect the right of access.

2425. Would you go so far as to suggest ploughing of the land which would limit the public to narrow footpaths? —I think we would all subscribe to the view that one should try to make full use of the land while taking these other factors into account. A particular common might still perhaps be quite capable of giving public recreation and access but as grassland could make a good contribution on the agricultural side. I think one must strike a balance between the two points of view.

2426. *Mrs. Paton*: Would you not agree that, in the case of large towns, there is all too little land for public recreation, and that the crying need in many of them is for more land on which people can get air and exercise? —I think that is probably so, but I am not sure that I am competent to express an opinion.

2427. I am thinking of towns where the population is very compact, the streets are long, and there is very little land for the local authority, even to use as a children's playground. Is it not rather provocative to suggest that common land in that neighbourhood, should be utilised for other purposes than recreation? —In such a case though, the common land would probably be subject to schemes under one of the Acts previously mentioned, such as the Metropolitan Commons Act. —*Mr. Batting*: It would be under the care of the local authority. It would be in a rather different category from the commons

that we have in mind. —*Mr. Spencer*: We do not have in mind suggesting that common land should necessarily be used for agriculture in cases such as you quote. The greatest demand must rule. We would not like to suggest anything else.

2428. *Chairman*: You also refer in paragraph 8 to statutory powers of limitation. What powers had you in mind? —*Mr. Watt*: The powers under Section 193 of the Law of Property Act, 1925.

2429. Do you mean the case where a declaration is made that the public have a right of access, subject to control? —Yes.

2430. You go on to say ' . . . and it may be that they are insufficiently invoked.' Do you mean invoked by the land-owner? —*Mr. Halls*: Yes.

2431. The tenant in fee simple cannot be forced to exercise his powers under Section 193 of the Law of Property Act. How then should they be strengthened? —I would have thought that legislation could have made the necessary provisions to bring it home to the land-owner that public access should be properly looked after and controlled.

2432. Do you mean that the Minister, local authority, or other body should butt in and say that the land-owner must allow access, but subject to limitation? —That is what we had in mind.

Chairman: I should like to thank you very much for the memorandum you have given us, and for coming along to answer these questions. We are extremely grateful.

(The witnesses withdrew.)

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HER MAJESTY'S STATIONERY OFFICE

MINUTES OF EVIDENCE

19

Wednesday, 14th November, 1956

WITNESS

Corporation of the City of London



LONDON

HER MAJESTY'S STATIONERY OFFICE

1957

TWO SHILLINGS NET

OP63

List of Witnesses

WEDNESDAY, 14th NOVEMBER, 1956

MR. W. E. SYKES, M.C., J.P., C.C.

Chairman of the Coal and Corn and Finance Committee

MR. A. D. C. LE SUEUR, O.B.E., B.Sc., F.R.I.C.S.

Superintendent of Burnham Beeches

MR. E. M. RICHARDS, LL.B.

Town Clerk's Department

MR. CYRIL GAMON, M.V.O.

Chairman of the Epping Forest Committee

LIEUT.-COLONEL E. N. BUXTON, M.C.

Verderer of Epping Forest

COLONEL H. J. CHAPPELL, O.B.E., M.C., T.D.

Verderer of Epping Forest

MR. ALFRED QVIST, F.L.A.S.

Superintendent of Epping Forest

MINUTES OF EVIDENCE
TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1.

Wednesday, 14th November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
F.R.I.C.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

PROFESSOR ALUN ROBERTS, Ph.D.

DR. W. G. HOSKINS, Ph.D.

SIR DONALD SCOTT

MRS. F. B. PATON, J.P.

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER *Assistant Secretary*

**First Memorandum of Evidence submitted by the Corporation
of the City of London**

1. During the last 100 years the Corporation of the City of London has been actively engaged in the acquisition and preservation of open spaces for the benefit of the health and recreation of the population of London. The cost of acquisition and subsequent maintenance etc. has been borne entirely by the Corporation's private funds. No part of the expenditure has been a charge on the City's or other ratepayers.

2. The principal open spaces owned, controlled and managed by the Corporation and their approximate acreage are as follows:—

- (i) Epping Forest—6,000 acres ;
- (ii) Burnham Beeches—500 acres ;
- (iii) Coudon Commons (including Farthingdown, Riddlesdown, and Kenley Common)—400 acres ;
- (iv) Spring Park and West Wickham Commons—75 acres ;
- (v) West Ham Park—77 acres ;
- (vi) Highgate Wood and Queen's Park, Kilburn—100 acres.

3. Epping Forest is dealt with in some detail in this first memorandum. A second memorandum covers Burnham Beeches and Coudon Commons. A supplementary note is also included about West Wickham Common. No reference is made to the other open spaces mentioned in paragraph 2 above because, so far as is known, no rights of common attach to them and they do not otherwise come within the terms of the suggested definition of common land supplied to the Corporation by the Secretary to the Commission. For a like reason no reference has been made to the public open spaces in the City.

EPPING FOREST

4. The Corporation, as Conservators, are responsible for the control and management of Epping Forest. This large open space comprises a great stretch of diversified common and forest land extending from Wanstead Flats in the South to Epping in the North, a distance of nearly twelve miles, and containing a total area of nearly 6,000 acres. The Conservators' functions are carried out by a Committee consisting of twelve Members of the Court of Common Council and four verderers, the latter being elected by the Commoners of the Forest.

5. The encroachments on Epping Forest were so extensive during the second half of the nineteenth century that the aid of the Corporation was invoked to save it from further spoliation, and it is interesting to note that it was the rights of common possessed by the Corporation as owners of Ilford Cemetery which warranted their initial intervention. They commenced a Suit in Chancery in 1871 on behalf of themselves and all owners and occupiers in Epping Forest against the Lords of the Manors for the purpose of staying any further illegal enclosures and to obtain a declaration that all owners and occupiers in the Forest were entitled to rights of common over the whole of the waste lands.

6. The Corporation were also instrumental in reviving the meetings of the Ancient Court of Verderers (the Judicial Officers of the Forest Courts) who had power to deal with unlawful enclosures in the Forest. In September, 1871, a long list of unlawful enclosures in the Forest was presented to this Court. In 1874 the Master of the Rolls delivered judgment in favour of the Corporation, declaring and establishing the old rights of commoners, and a large extent of land found to be unlawfully enclosed was thrown open.

7. In 1872 the Corporation promoted a Bill in Parliament for the permissive sale to the Corporation, by the various Lords of the Manors, of their interest in the Forest. Such was the strength of the opposition, the Bill failed to pass. However, after the judgment of 1874, negotiations were opened by the Corporation for the attainment of its object by voluntary agreement which resulted in the purchase of more than 3,000 acres of waste land. The timber and minerals were also purchased, and a separate licence in mortmain was obtained from the Crown to enable the Corporation to hold the lands as open spaces forever.

8. Finally in 1878 there was passed into law the Epping Forest Act. It had taken more than ten years of persistent effort on the part of the Corporation, culminating in this Act of Parliament, to render the Forest safe from further encroachments.

9. The principal effects of the Act of 1878 were

- (i) to return to the Crown the right to appoint a Ranger of Epping Forest (at present H.R.H. the Duke of Gloucester) upon whom various powers and duties are conferred and imposed;
- (ii) to appoint the Corporation of the City of London as Conservators of Epping Forest;
- (iii) to disafforest Epping Forest and terminate all Crown rights therein except as in (i) supra;
- (iv) to continue all rights of common of pasture and of common of mast or pannage for swine as they existed at the passing of the Act;
- (v) to grant the public the right to use the Forest as an open space for recreation and enjoyment and for this purpose to ensure that it was kept unenclosed except for certain limited purposes e.g. replanting;
- (vi) as far as possible to conserve the natural aspect of the Forest; and
- (vii) to make appropriate bye-laws (which have to be approved by the Ranger).

10. The Act of 1878 provided that the extent of Epping Forest should be as shown on plans deposited. Provision was made for the appointment of an arbitrator to settle any matters of difficulty or uncertainty. There was and is no power to alienate any part of the Forest. Since 1878 land has been acquired from time to

time as additions to the Forest, and the Corporation is at present promoting a Bill in Parliament to provide, *inter alia*, that such additional land shall be deemed to form part of the Forest and shall be managed and regulated in accordance with the provisions of the Act of 1878.

11. Epping Forest lies to the North-East of and penetrates well into Metropolitan London. About 5,540 acres extending from Epping in the North to Forest Gate in the South constitute a crescent-shaped belt about twelve miles long and nowhere more than about two miles wide, unbroken except for highways by which it is much segmented. Of the remainder, about 270 acres lies immediately North of Epping, the balance comprising detached blocks of roadside strips principally in the Parishes of Waltham Holy Cross and Epping Upland. The whole area is unenclosed.

12. About 4,000 acres are woodland and 2,000 acres grazing land (including several large ponds). The greater portion of the latter falls within the Parishes of Chingford, Loughton, Buckhurst Hill and the 'Southern Forest Parishes' which are contiguous to the first three Parishes. This land is also largely used for organised games.

13. There are some 64 staff employed in the management of the Forest. These include administrative staff, keepers, woodmen, maintenance and general staff. In addition there are twelve Reeves who are part-time Officers in connection with the exercise of common rights. The approval of the Ranger is necessary, in connection with the appointment of certain officers. Reeves are appointed on the nomination of the Parish Councils.

14. The more important aspects of regulation and management of the Forest are dealt with in the succeeding paragraphs.

Maintenance of law and order

15. The Forest Keepers are Special Constables for the purposes of the Epping Forest Act, 1878. Comprehensive bye-laws are made and revised from time to time and the enforcement thereof constitutes the principal function of the Forest Keepers. The Forest is divided into 'beats', each in charge of a resident (uniformed) Forest Keeper (lodges are appropriately distributed throughout the Forest). Apart from the uniformed Forest Keepers, there are four who carry out their duties in civilian clothes; they range throughout the Forest, as and where they have reason to suppose their services are most required. In cases of bye-law infringement, dissuasion and words of caution are preferred to prosecution; nevertheless, instances of flagrant or deliberate violation do occur, which necessitate the latter course.

Woodland and similar operations

16. (i) Excepting two small groups of conifers, the woodlands comprise only hardwoods, the Forest being unique in respect of the quantity of hornbeam which it contains. The state of the woodlands at the time of the establishment of the Conservancy was that resulting from centuries of pollarding, (and coppicing in relatively confined areas). Very few standard trees were in evidence. Accordingly, the natural aspect of the Forest which, by the Act, it was incumbent upon the Conservators to preserve, had, in the woodlands, first to be recreated.

(ii) With the exception of a few small plantations formed to meet special circumstances in the few years immediately after the passing of the Act, and some narrow belts to screen urban development on some Forest fringes, the silvicultural system applied to the woodlands has been that of natural regeneration, the woodlands remaining unenclosed. A rotation of thinning has created conditions in which seedlings have become established and saplings developed, and the evolution of woodlands of more natural aspect certainly than those inherited by the Conservators, can be readily discerned.

(iii) It is necessary to emphasise that in applying this system, timber production, as it is commercially understood, has not been an influence in any way. Whilst useful timber trees will ultimately develop out of a system of proper woodland management, the fact is incidental to the purpose of the Conservators. Thus, in thinning operations, a pollarded tree, if it is thriving and showing signs of develop-

ing into one of substantial proportions, is considered to be of sufficient amenity value to justify being preserved and encouraged, even at the expense of younger growth of better form. Vistas, too, are deliberately created, generally in otherwise uncongenial woodlands, serving the dual purpose of increasing their attraction and creating circumstances in which young growth can become established.

(iv) The Conservators submit that in practice, the system which they have consistently applied has shown itself reasonably to meet the obligations of the Act, and to afford the amenities envisaged thereunder. There is the further factor that any other system would call for enclosures of a type and on a scale out of all practical consideration.

Encouragement of recreational facilities

17. (i) This takes the form of (a) preserving the Forest as a place of natural beauty for quiet enjoyment; (b) 'setting apart' land (but not granting exclusive occupation thereof), for particular education authorities, clubs, schools, youth organisations on which to play cricket, football, golf; granting facilities for cross-country running; maintenance of horse rides; (c) granting of licences for boating on certain lakes and for the conduct of traditional and special fairs, refreshment places; (d) provision and maintenance of a public golf course.

(ii) The areas set apart, as referred to in the foregoing, total 430 acres. Of these, 130 acres are the subject of a special arrangement, to which the Conservators are substantial contributors, whereby a part of Forest land not now so heavily used for grazing purposes has been improved and is being maintained for football, cricket and ultimately other sporting activities; 90 acres are used for two 9-hole club golf courses and 110 acres for a public golf course maintained by the Conservators, all preserving a semi-natural aspect; and 210 acres are used under various arrangements by many other clubs for football and some cricket. Horse-riding in the southern part of the Forest is confined to demarcated rides maintained by the Conservators and extending to about 20 miles. In the north there are no restrictions on this activity.

(iii) The policy of the Conservators has always been to meet the diversity of interests of the vast community resorting to the Forest by providing the greatest possible variety of recreational facilities therein.

Educational

18. The Forest affords opportunities for the study of natural history and every encouragement is given to those wishing to take advantage thereof. An ancient building, known as Queen Elizabeth's Hunting Lodge, houses a museum of exhibits—archaeological, botanical, zoological and of local association and interest. This is open to the public on the popular visiting days in each week and, with the co-operation of local interests, efforts are continually made to display the exhibits in such a way as to assist visitors, including groups of schoolchildren, to gain the fullest appreciation of the Forest. That these facilities are of value is shewn by the fact that one local authority has seen fit to appoint a lecturer whose time is almost wholly devoted to what is demonstrable in the Forest, in which his lectures take place.

Operating the rights of common

19. (i) The provisions in the Act of 1878 relating to commoning and the orders, rules and regulations made thereunder and incorporated in the bye-laws, perpetuated the system of commoning that had obtained since the 2nd August, 1790, when the Court of Attachments made appropriate regulations. Alterations in that system can only be made with the consent of the Ranger.

(ii) Those Parishes in which owners and/or occupiers of land or tenements have rights of common (with individual exceptions) are Epping, Theydon Bois, Waltham Holy Cross (including Waltham Abbey and Sewardstone), Chingford, Loughton, Buckhurst Hill, Woodford, Walthamstow, Leyton (including Low Leyton), Wanstead (including Cann Hall), Little Ilford and West Ham (but parts only of the three latter).

(iii) The exercise of common rights has somewhat declined. Two main causes are distinguishable: (a) virtually the complete urbanisation of the Southern Forest Parishes and the consequent disappearance therefrom of stock owners; and (b) the change-over, on holdings elsewhere, to tuberculin-tested stock and the consequent inability of stock owners to allow their animals to graze at large in the Forest.

(iv) It is desired to emphasise that the conditions of urbanisation and traffic now obtaining, particularly in the Southern Forest Parishes, do not of themselves constitute a criterion as to whether or not grazing rights in, and consequently the penetration of cattle into, those Parishes should be curtailed. As has been stated, the greater proportion of the whole of the Forest grazing land lies within these Parishes, to which the cattle enlarged upon the Forest are naturally attracted. The rights of intercommonage are as valuable and important as ever they were. Intensification of road user and greater urbanisation have occurred side by side, and it is sometimes readily forgotten that the roads became established on, and cross common land, and the dwellings erected alongside common land. It is submitted that forgetfulness of these facts alone cannot justify deprivation of a right attaching to many holdings even though that right is not regularly used by all. Furthermore, practicable measures for achieving control, restriction or curtailment cannot be readily envisaged.

20. From the foregoing it will be appreciated that Epping Forest has special circumstances which serve to distinguish it from many other common lands, i.e. its size and its proximity to a huge built up area; the contrast between the conditions of rurality and urbanity obtaining at the extreme of the Forest; and the diversity of functions and/or amenities, agricultural, silvicultural, education and recreational, which it affords. These circumstances do at times suggest a conflict of user, but the Corporation are satisfied that the Epping Forest Act of 1878 provides all the facilities necessary to maintain a proper balance between such uses, and that such a balance is being maintained.

21. The provisions of the Act of 1878 were very far sighted perhaps because it followed intense controversy. The very conditions which led to the prolonged struggle to preserve Epping Forest are now immensely intensified with the vast increase in the neighbouring population and the modern facilities for transport. It will have been seen that the Act of 1878 gave powers to utilise the Forest for the benefit of the public to the maximum and they have been so used. The Corporation have not from their experience found that these powers are in any way inadequate. The Corporation would wish to emphasise the immense and increasing value of Epping Forest to the population of Greater London not only to that of the Northern and Eastern parts of London. They would deprecate in the strongest possible terms any change of user of the Forest which restricted in the slightest degree not merely the present value of the Forest to the people but the continued expansion of that value and that they would feel compelled by their duties to resist to the utmost any such move.

Second Memorandum of Evidence submitted by the Corporation of the City of London

1. This Memorandum should be read in conjunction with the first Memorandum of Evidence.

2. The open spaces here dealt with in detail are known as Burnham Beeches and Coudon Commons and comprise the remaining areas on which it is desired to submit written evidence. Both are owned, managed and controlled by the Corporation of London, and are maintained without expense to the public.

BURNHAM BEECHES

1. This was the first of the open spaces acquired by the Corporation under the powers conferred by the Corporation of London (Open Spaces) Act, 1878 (41 and 42 Vict. c. 127) consisting of an area of 492 acres, most of which were acquired in 1880, although there have been some small additions in subsequent years.

2. The original land was conveyed to the Corporation at a cost of over £10,000 subject to all rights of common etc. affecting it and the Corporation also paid a proportion of the cost of constructing certain roads across the Beeches.

3. In general, Burnham Beeches and East Burnham Common form a most valuable and extensively used recreational area. Visitors come chiefly from the widely built-up district around Slough and from the Western parts of Greater London. At fine week-ends the area probably carries more visitors per acre than any other open space in the South of England, with the number of vehicles being as many as four per acre. It cannot be doubted, therefore, that the area provides a much-needed open space, which is greatly appreciated by the general public.

4. Rights of common of pasture are confined to East Burnham Common (137 acres) and to approximately 114 acres of the adjoining land. Apart from a few donkeys, common rights have not been exercised for over forty years, and in fact no animals have been sent out since 1939. The result has been that the greater part of the land, formerly used for grazing, has by now reverted to woodland. Despite this disuse of commoners' rights, no attempt has ever been made to discourage their exercise. Once in every year a notice is posted on the door of the parish church of Burnham giving a place, time and date when anyone wishing to send animals out to graze can have them marked for the purpose.

5. The most notable feature of this common land is the pollard beeches for which Burnham Beeches are celebrated and here these trees have considerable historic value. They were topped at 8 ft. above the ground level to prevent damage to the new shoots and their average age is 320 years. They form the largest collection of old beech trees in the world and one of the earliest examples of systematic woodland management (topping for fuel production) in the country.

6. East Burnham Common also is a large area of woodland of the greatest interest to foresters. It consists of a complete successional series showing the gradual change from grassland to oak and beech woodland. It is believed to be one of the finest examples of its kind in the country. These woodlands are managed by a highly trained forestry expert who has been closely connected with the area for over thirty years. Because of their historical value, preservation of the pollard beeches is considered of the first importance, and experiments on the natural tree growth of the Common have proved that it is possible to produce good quality fir timber without enclosure and at low cost.

7. The whole cost of the acquisition and management of Burnham Beeches has been borne by the Corporation, without expense to the Ratepayers. There are three keepers, who work in collaboration with the local police, and one of their chief duties is the protection of the flora and fauna of the area. In fact, Burnham Beeches is a good example of common land which is being put to the best possible use by making every effort to preserve the local flora and fauna and practising the principles of good silviculture wherever possible as well as maintaining suitable recreational areas for the public.

COULSDON COMMONS

1. The open spaces covered under the heading of Coulsdon Commons include the areas known as Riddlesdown, Farthing Downs, Kenley Common as well as Coulsdon Common itself. They were acquired mainly in 1883 under the powers of the Corporation of London (Open Spaces) Act, 1878 (41 and 42 Vict. C. 127) at a cost of over £7,000. Various additional areas have since been acquired, and at the present time a total of 418 acres of pleasant woodland is available for the use and enjoyment of the public subject only to appropriate bye-laws. The average cost of maintenance has been in recent years approximately £2,000 per annum including the wages of four keepers. The whole cost has been borne by the Corporation without expense to the Ratepayers.

2. The bye-laws were originally designed to protect commoners' rights, but rights of common have largely fallen into disuse, and to-day there is only one commoner who grazes his cattle intermittently on Farthing Downs. As a result there

are some areas of these commons which could profitably be used for general grazing purposes subject to proper safeguards against injury to the public. This could result in a possible improvement of the quality of the land by arresting the growth of scrub and thorn bushes, and thus allow proper use to be made of the grazing value of the land. At present this last is either wasted or the grass is merely used as hay after mowing; the undesirable results of this practice need scarcely be elaborated.

3. A football pitch exists on one cleared area, and camping by Scouts and Guides is permitted under licence. More land could be utilised for organised recreational purposes if it was not necessary to have bye-laws for the protection of commoners' rights.

4. In general the Commons consist of extensive stretches of varied countryside open to the public, and provide fine examples of protected flora and fauna of great interest to amateur and professional study apart from public enjoyment.

Supplementary Note submitted by the Corporation of the City of London

WEST WICKHAM COMMON

(1) West Wickham Common was acquired in 1892 under the powers of the Corporation of London (Open Spaces) Act, 1878 (41 and 42 Vic. c. 127), the Corporation paying the sum of £500 being the balance of the purchase money required.

(2) There are 25 acres of woodland and open space extending a distance of about half a mile adjoining a main road. West Wickham Common is much frequented by the public, and its situation would preclude any use for grazing even if this were found desirable; nor is it suitable for organised recreational purposes. At the Western end there is an ancient earthwork. There are no commoners' rights, and the existing statutory powers are sufficient for administering the Common.

(3) The average cost of maintenance, a charge on the private funds of the Corporation, have been in recent years approximately £1,000 per annum, including the wages of two keepers.

Examination of Witnesses

MR. W. E. SYKES, M.C., J.P., C.C., MR. A. D. C. LE SUEUR, O.B.E., B.Sc., F.R.I.C.S., MR. E. M. RICHARDS, LL.B., MR. CYRIL GAMON, M.V.O., MR. ALFRED QVIST, F.L.A.S., LIEUT.-COLONEL E. N. BUXTON, M.C., and COLONEL H. J. CHAPPELL, O.B.E., M.C., T.D., on behalf of the Corporation of the City of London.

Called and Examined.

2433. *Chairman:* I should like to thank the Corporation of the City of London first for providing us with these two extremely useful memoranda and secondly for arranging our visit to Epping Forest to-morrow. Can we take the memorandum on Burnham Beeches and Coulsdon before that on Epping Forest? I understand that will be more convenient. First however I would like to raise a general issue which applies to

both memoranda. Is the cost of maintaining these commons met at the moment by the City of London?—*Mr. Sykes:* It is met entirely out of the private estate of the City. Not a penny falls on the ratepayers, or indeed on the taxpayer.

2434. How much is the total cost? I notice that for the Coulsdon Commons the cost of maintenance is approximately £2,000 per annum.—The cost for all

the City's commons last year was just over £60,000. The average expenditure for Burnham Beeches over the last five years is £6,900; but it has been the Corporation's custom to charge the building or rebuilding of keepers' cottages to the current expenditure. In this way the figure of £6,900 includes the cost of a certain number of new cottages built during the five-year period.

2435. Is there any legal obligation on the City to maintain these commons, or could you just let them go back to forest once more?—That is a legal question that I could not attempt to answer, but it is a matter of pride to us to maintain them. We, I think, originated the idea of open spaces for the benefit of the public and we are very proud to maintain them. We do so under the provisions of the Corporation of London (Open Spaces) Act, 1878.

2436. That is very creditable. But might not the ratepayers at some stage come to think that the money spent, although it comes from the Corporation's private estate, should be used for the benefit of the City ratepayers and not for the benefit of the people of the London area generally?—The private estate is also used for the benefit of ratepayers of the City of London in other directions. The Corporation have never taken a narrow view and we have had no comments from ratepayers adverse to the line which we have followed.

2437. Is this happy arrangement, happy from the point of view of the City of London, likely to continue in the future?—I think so.

2438. Turning now to the memorandum on Burnham Beeches paragraph 3: do you not have a serious litter problem with so many visitors?—*Mr. Le Sueur*: It is a serious problem, but we can cope with it.

2439. How do you cope with it?—There are a very large number of litter baskets, and notices are put up in very many places. Unfortunately despite all our endeavours, we have never been able to catch anybody actually dropping something. If anyone was caught they would at least be checked. I would rather like to have one case—that is all I need. During the middle twenty-six weeks of the year it takes three men a couple of days to clear up after each week-end.

2440. Is litter cleared up regularly there in the summer?—Yes, it has to be, otherwise there would be a sea of rubbish. But people are very good about using litter baskets, provided that they are sitting within one hundred yards of one. Beyond that distance they are not quite so good. But I personally am quite satisfied with the appearance of my area from Tuesday to Saturday.

2441. In paragraph 4 you say that rights of common of pasture are confined to East Burnham Common. Does that mean that the other part is not really common land at all?—That is rather a difficult point. Nobody is quite certain what the area covered by rights of common is. It is generally considered that East Burnham Common, which is 136 acres in extent, definitely has rights of common over it. A good many years ago however, I discovered an old document—a Schedule of Property attached to a deed of Appointment and Release, dated 12th February, 1933—signed by Lord Grenville, who owned the place in 1837, in which he announced that he had rights over 251 acres, but nobody has been able to discover to which land he was referring. Actually, the right of common to graze cattle or farmstock of any type has not been exercised for 48 years: the last animals we had were three donkeys in 1939; since then there has been nothing.

2442. Why are these common rights no longer exercised?—I should say myself that it is largely due to the demand for tuberculin-tested milk. Moreover, this is not a parish common, but a manorial common, and the manor is not very large—only about 1,200 acres—and there were never very many farms on it. Out of that less than 300 acres are farmland now. An enormous amount has gone to building. In the last five years something between 160 and 180 acres have been taken by the L.C.C. for building. For such a small manor the percentage of woodland waste is very large: very roughly speaking, the arable was 500 acres one hundred years ago; the woodland and waste are now over 500 acres, which as far as I can see is a very high proportion compared with other manors of the same size in the South of England.

2443. The next paragraph refers to 'lopping for fuel production'. Does that not mean there were estovers?—No.

The right of lopping for fuel production was owned by the lord of the manor—the right was never given under estover.

2444. *Mr. Evans*: Is the fact that the rights of grazing have not been exercised a good thing from the point of view of the present management?—Yes. I am very glad that there are no cattle. I can give you the actual area of grazing land. Out of 375 acres of so-called waste, I should say that there are not 5 acres of grass fit to feed a cow on. We have a certain acreage of what I might call 'Wavy-Hair Grass type', on which no respectable cow can produce milk, but, we have no grazing land, strictly speaking, left at all. What grass we have now is either a children's playground or used for parking.

2445. *Chairman*: There is a reference at the end of paragraph 6 to something which seems to contradict much of the evidence we have had previously. You say '... it is possible to produce good quality fir timber without enclosure and at low cost'; do you mean without any fencing at all?—Yes, but, of course, all that has been proved is that it is possible on the particular area over which the experiment was conducted.

2446. Are there any animals there?—None that we cannot control.

2447. Would it make a difference if rabbits came back?—I do not think this particular area of woodland would be affected very much. Rabbits never seem to attack pine, they are rarely very numerous, and I find when they are, they have plenty of heech which they prefer to pine. But, of course, the experiments are not very large. The one to which I am referring, in which we obtained good timber after working on it for 20 years, only concerns 100 to 150 trees in one block.

2448. Do you get any income from the common at all?—At the moment, yes. There is quite a good income from the sale of firelogs, from dangerous and damaged trees. In the last ten years the total income from the waste, I should say, would be £2,750, but that figure is going to decrease because during that time I was conducting a considerable safety campaign on the old pollards. Now that I have cut the bad ones down, most of the others are fairly safe and I shall not be cutting down nearly

as many trees in the future as in the last ten years.

2449. Does this income have to be offset against the total expenditure of roughly £6,900 a year?—*Mr. Sykes*: No, that is the net figure.—*Mr. Le Sueur*: Of course, we get a certain amount from sale of timber, but only in comparatively recent years because the policy before the war was to leave the place to nature. When I took over I decided that it would be better to assist nature, and we are now felling in certain places to bring up the trees underneath which have been distorted or damaged by the older trees. Nevertheless in an Open Space felling has to be very carefully done.

2450. I have been shown an article in a recent number of 'Country Life' suggesting that natural regeneration of heeches is not very satisfactory because the quality of the trees deteriorates.—I think there is considerable truth in that remark. You cannot expect to get good heech seeds from a bad old beech. Some people say that it is possible, even if you have had seed, to upgrade it by cultivation to a better tree than it would be if you left it alone.

2451. Have you in fact been getting seed from the Forestry Commission and re-planting?—No. I depend very largely on natural regeneration. We have at least 237 acres of mixed oak, heech and birch wood in which there are a certain number of good trees; I collect the seed from a good tree and either sow it direct or, in many cases, merely transplant young trees from one part of the wood to another where I think it is required. It is very difficult to get good trees because the pollarded heeches—some of them very large trees—throw an enormous amount of shade, and, of course, anything that comes up underneath never progresses very far.

2452. Have you any pigs among the beeches now?—No.

2453. Are there no rights of pannage, as they are called?—I think there must have been once because pigs were known to have been there in droves over one hundred years ago, but there has not been a pig among the trees for about one hundred years at any rate. There is no domestic animal of any sort grazing at present, and I cannot see any likelihood that there ever will be.

2454. *Sir George Pepler*: Is it the intention to pollard the new beeches?—Definitely not. I do not like the Victorian fashion of cultivating ruins. I like a tree to look like a tree. It was suggested to me a good many years ago that we might start having what you might call 'dummy' pollards, but I am against that.

2455. *Mr. Evans*: Is Burnham Beeches almost entirely 'amenity' woodland, neither the agricultural nor the real forestry aspect entering into it at all?—Its purpose is primarily for amenity. Nevertheless all the areas which can be dealt with on what are generally considered to be good forestry principles are dealt with in that way. Nowadays it is necessary, even for the City of London, to make money, and that is done where possible.

2456. *Chairman*: Turning now to Coudon Commons you give the cost of maintenance as about £2,000 per annum, and again you say that commoners' rights have largely fallen into disuse. Would you say in this case that if the rights were exercised, it would probably effect an improvement to the common?—*Mr. Richards*: Yes, that is so.

2457. Is the explanation that brambles, scrub and so on are growing up on the common?—The difficulty is that the byelaws which have been framed by the Corporation under their private Act—(The Corporation of London (Open Spaces) Act, 1878—do not permit grazing except in pursuance of common rights, but since our evidence was prepared the Coal and Corn and Finance Committee has given further consideration to this matter and we have ascertained that we can alter the byelaws under our existing powers, so as to enable us to permit the commoning or grazing of animals of adjoining land-owners and so put the grass to a useful purpose, and possibly also, as you point out, improve the quality of the land.

2458. In other words, is it important, from your point of view, that common rights should be exercised on a common of this kind?—Yes, it is desirable that this land should be used for grazing purposes. It is a waste of good land not to use it at all except merely for amenity purposes.

2459. Would grazing also improve the land from the point of view of amenity—from the point of view of members of the public who have access to it?—Yes. As we say in our evidence, 'this could result in a possible improvement of the quality of the land by arresting the growth of scrub and thorn bushes, and thus allow proper use to be made of the land.' But grazing is really a secondary use of the common. Improvement of grazing as such would not be the main purpose of the Corporation altering the byelaws. The land is used mainly for rambling, walking and so on. It is amenity land, not grazing land.

2460. You go on to talk about 'the undesirable results' of collecting the grass and using it as hay and say they 'need scarcely be elaborated'. Why is it undesirable to cut the grass for hay?—Constant cutting without refertilisation by grazing encourages the coarser grass to grow and this stifles the finer grass. However it is not easy for the Corporation to dispose of the grass after cutting. We have no farm appliances in the usual sense of the term. We have four keepers who have a tractor and a small rotary scythe, but it would be much more economic to allow the grass to be used by animals grazing.

2461. Is it a matter of economics then?—It is mainly a matter of economics.

2462. *Professor Stamp*: You have been in possession of much of this land since 1883; have you any record of any change in the character of the vegetation of the common land over that long period of time?—I think Mr. Le Sueur, from his longer experience of this open space than mine, can help the Commission with regard to the character of the vegetation. He is the forestry adviser so far as this open space is concerned.—*Mr. Le Sueur*: I have known the area fairly well for about thirty years. I would say that on Coudon Commons the character of the vegetation has changed hardly at all. I do not notice any change. As regards Kenley Common, I would say myself that there is rather more weed in the open spaces than there was thirty years ago.

2463. Would you give us a general picture of the vegetation of Coudon Commons?—I am afraid that I could not. I am primarily concerned with the trees,

and I can only speak from what I have noticed walking over the open spaces to examine the trees.

2464. We are familiar with the argument that unless land is used agriculturally it always deteriorates. Consequently we are very interested to know what in fact has happened to this common since 1883. Would you say that there has been very little change?—I have known it since 1926; that is for thirty years. As I say, the general impression I have is that the quality of the grass in the main part of Kenley Common especially is going back, getting rougher and more weedy, and the lower parts are tending more to go to scrub.

2465. Is there sufficient rambling by the public and so on to keep down the growth of brambles, which seem to cause such trouble elsewhere?—There does not seem to be much bramble there in the main part, but it is encroaching from woodland. I should say that if the common were left alone for ten or fifteen years, the whole area would become scrubland.—*Mr. Richards*: Riddlesdown, Farthing Downs and Kenley can, I think, most aptly be described as short grass downland with very little wood, with a certain amount of scrub and thorn which tend to spread but which the keepers have been able to keep in partial check. The Corporation has now enabled them to keep scrub in greater check by providing them with mechanical apparatus—tractor and winch, and so on.

2466. Is there now systematic cutting of vegetation before it grows unmanageable?—Yes.

2467. *Sir Donald Scott*: Is there much bracken?—I am not aware of much bracken except on Coudon Commons. There is some there, but not so far as I am aware on the other three.—*Mr. Le Sueur*: That is so.

2468. *Sir George Pepler*: I have known these commons for fifty years. I think you have tidied them up somewhat. The scrub was tending to spread. Is the golf course still at Kenley?—*Mr. Richards*: There has not been a golf course on our part of Kenley Common within the last thirty years. There is an aerodrome. The Air Ministry took part of Kenley Common and gave the Corporation other land in exchange.

2469. *Professor Alun Roberts*: How tall is the grass when you offer it for hay? Is it hay in the accepted sense of having reached the full flowering stage?—Three acres on Kenley Common are mown by a local farmer when the grass has reached the full flowering stage.

2470. Is any fertilising done then to compensate for the loss of this vegetation and to maintain the sward in the manner you would wish?—Up to the moment, no.

2471. Opinion has been expressed that it would be well to have stock on the grass in the interests of the sward. Could you get anyone to put stock on it?—We think we could, particularly on Riddlesdown, Farthing Downs and Kenley. That is why quite recently, since this evidence was framed in fact, the Coal and Corn and Finance Committee has decided to alter the byelaws to permit us to allow on to the common other animals than those from the one man who has commoner's rights.

2472. If that came about would the sward be better since the fertility would be returned?—I should have said that the quality of the grass generally on these commons was not at all bad.

2473. If grass is left after being shorn with a gangmower—as on a golf course, the fertility is returned as vegetation; if, on the other hand, it is carried away as mature hay is it not necessary to improve the turf by the use of mineral fertiliser?—The position, as I have explained, has rather changed since our memorandum was prepared. It is part of the Corporation's policy, as we say in paragraph 2, to improve the land by grazing, but that is only incidental to the purpose of making greater use of the commons for amenity purposes.

2474. *Sir George Pepler*: Does not that conflict to some extent with what you say in paragraph 3, that more land could be utilised for organised recreational purposes if it were not necessary to have byelaws for the protection of commoners' rights? Would not the byelaws be required to control the grazing?—We are proposing to alter the byelaws in such a way that it would be possible to have more ground for recreation. The preparation of our evidence for the Commission has drawn

our attention to the scope for improvement in the administration of these open spaces.

2475. *Chairman*: Is your power to do this derived from your private Act? If you were an ordinary lord of the manor would you have the power?—Our power is derived from our private Act.

2476. *Professor Stamp*: Are motor cars driven over these commons?—The passage of vehicles over the commons is forbidden under the Corporation's byelaws wherever there is a notice prohibiting it. There are, however, ancient rights of way across Farthing Downs, and across Riddlesdown of which members of the Commission may be aware.

2477. *Chairman*: Is that a carriage-way across Farthing Downs?—It is a metalled track across the common and is not used very much. But legally anybody may take a car over it if he likes to take the risk of getting stuck.

2478. *Professor Stamp*: How far off the highways are people allowed to, and in fact do they, drive their cars?—On these commons, only a very short distance.—*Mr. Le Sueur*: On Burnham Beeches it is forbidden under the byelaws to park a vehicle which is used for the purpose of recreation more than 15 yards from the hard road. Actually, we cannot possibly adhere to that rule since if we did nobody would be able to pass along the roads at all. It is, therefore, left to the Superintendent's discretion how far to allow cars to go away from the road. On a fine Sunday there are up to 400 cars, five deep, and they take up rather more than the 15 yards. If they had to stay on the road, of course, nobody would be able to get through at all.

2479. I am particularly interested in the practice on the Coulsdon Commons which are chalk grassland, rather than Burnham Beeches. Would you agree with an argument which has been put before us that where sheep are no longer present to tread down the short grass the work is done efficiently by the wheels of motor cars in their place?—It is done more efficiently by the exhausts of motor cars! I find that by allowing cars to park on large broom areas, the broom gradually dies!

2480. Would you agree that where heavy cars are allowed to drive over

downland they press the soil down and produce a short turf, very similar to that which results from sheep grazing?—Yes, I quite agree with that.

2481. Would you say then that really no harm is done to common land, especially common land on chalk, by allowing cars to drive over it?—In reasonable weather, yes: the difficulty lies in the question, what is a vehicle? Unfortunately, charabancs and motor buses are vehicles and when they are driven over any sort of soil in soft weather, they leave a rut that is sometimes about 4 inches or 5 inches deep. Ordinary light motor cars do very little harm.

2482. *Sir George Pepler*: What is the penalty for driving over the Coulsdon Commons? Is any prosecution left to your wardens?—The penalty is the general penalty under the byelaws, which is on summary conviction for every offence, a penalty of £10; in the case of a continuing offence a further daily penalty of £5. But, of course, the exact amount is left to the discretion of the court.

2483. *Chairman*: May we turn now to the memorandum about Epping Forest? On paragraph 1, how much, roughly, does it cost the City to maintain Epping Forest?—*Mr. Qvist*: Last year the gross deficiency was nearly £37,000, which the City Corporation as such pay to the Conservators of Epping Forest as such. But since income tax does not have to be paid in respect of charitable expenditure of this sort, the City's private funds were, in effect, reduced last year only by just under £22,000.

2484. Was the £60,000 mentioned earlier as the total cost of maintenance of all the City's open spaces, a gross figure or a net figure?—*Lieut.-Colonel Buxton*: I think it is probably the net figure as are the other figures quoted. It includes expenditure on capital assets like keepers' cottages. A helpful figure might be what we pay in wages, which is one of the main annual items.—*Mr. Qvist*: I cannot give you the total wage bill, but keepers' wages for last year were £7,000; to this must be added other staff salaries.

2485. I would like to get this question clear because I think it is important—not so much from the point of view of these particular commons but from the

point of view of urban commons generally—to realise how great a cost proper maintenance may involve. If, out of a total cost of £60,000, £22,000 is for Epping Forest and something like £2,000 to £6,000 for the others, is there not a large account missing somewhere?—*Lieut.-Colonel Buxton*: I may have misled you. When I talked of the cost being 'net', I meant with income from the common lands deducted, not after allowing for tax rebates. I think the total of £60,000 would compare with our £37,000. There are sources of income of a limited sort even in Epping Forest.

2486. Is the gross figure of £37,000 then the net deficit? In other words after allowing for the income from the forest, is £37,000 what is actually paid by the City to the Conservators?—*Mr. Qvist*: Yes. When the City pays that sum over it claims a rebate of tax. The gross expenditure on Epping Forest last year was £50,335 and the gross income £13,636.—*Lieut.-Colonel Buxton*: May I, as one who is not a member of the Corporation, to whom we owe the money for upkeep, remark that as far as I know there were no large open spaces anywhere before the war that had anything like the opportunity of upkeep which the Corporation of London has given to Epping Forest. That is why, when people try to compare it with, say, the New Forest, and wonder what can be done to help one is made to appreciate how very public-spirited the Corporation is. But, of course, our expenses are very large, particularly in respect of wages, and even the City of London has grave anxieties over the increasingly large sum it is having to find.

2487. In paragraph 4 it is stated that the four verderers are elected by the commoners. Does that mean that you have a register of commoners?—Yes. The register is checked over every seven years as part of the procedure laid down in the Epping Forest Act, 1878.

2488. Are the verderers elected at a meeting?—Yes.

2489. Was this register compiled when the land was bought originally?—It began with the passing of the Act, in connection with the first election of verderers. There was an intervening time when great trouble was being taken to try to find out who were commoners and so on, during which the Court of Ver-

derers—a genuine court, and quite different from the present day verderers—was re-instituted in order to get some control. The register that the Court compiled checked the anxiety, but since 1878 it has been part and parcel of the Act that a register must be kept, those on the register being the commoners.

2490. Does the register indicate what their rights are?—No. Rights are not determined simply by levancy and couchancy because they were modified in 1790. They depend on the extent to which the commoners can graze animals on their own farms. A man must have enough land to stock his cows in winter. When he loses the land he is no longer qualified for registration. The only exception I can think of is that those who took land out of the forest waste illegally and acquired the legal title under the Act have no common rights.—*Mr. Qvist*: The present rule which governs turning-out is that an individual must have not less than half an acre to be registered as a commoner and to have common rights. He is entitled to turn out two cows or one horse for every £4 per annum rental value of his land. That is the rule which the Conservators have adopted as perhaps being more simple than the other one of levancy and couchancy, although the principles are the same.

2491. Have you made this rule under statutory authority?—Yes, the Epping Forest Act gave authority to the Conservators to adopt that rule.—*Lieut.-Colonel Buxton*: It was thought better to continue the rule that was in existence at the passing of the Act. That is the basis of the present rule.

2492. *Professor Stamp*: At the end of paragraph 5 you say: '... to obtain a declaration that all owners and occupiers in the Forest were entitled to rights of commons over the whole of the waste lands'; was that declaration not obtained?—The correct position is that they have a right of common only if they have the means of supporting cattle. But there were other common rights which were expunged by the Act which applied whether there is room for cattle or not, such as, in some manors, the cutting of firewood, and so on.—*Mr. Qvist*: I think the expression 'all owners and occupiers' really means all owners and occupiers then claiming and exercising common rights, not necessarily all

owners and occupiers of premises in the forest area.

2493. There is a reference in paragraph 19 (ii) which shows how very widely scattered those owners and occupiers are.—Yes, that is so. That subparagraph does not refer to owners and occupiers of anything and everything in the forest area. It refers to owners and occupiers who had common rights and were exercising them at the passing of the Act. They had a common right of grazing throughout the common: inter-commonage on all the manors.

2494. I mention that because we have heard of cases where all owners and occupiers of adjacent land have been credited with common rights.—That was not necessarily at any time in Epping Forest and certainly is not so today. A great deal of the land was disafforested under the arbitration.

2495. Would you regard a register of those with common rights as a very important part of the basis of your organisation?—It is certainly a very important part when it comes to, first the exercise of common rights and, secondly, the election of verderers, at which time the register is generally made up. Under the Act, the Conservators can themselves decide the appropriate times for making up the register and bringing it up to date. In practice they have done so in preparation for an election of verderers.—*Lieut.-Colonel Buxton*: The procedure is simple, too, since the rule attaches all rights to a good-sized hereditament, so that all that has to be checked is that the land has not changed hands.

2496. *Chairman*: This is a case where you have been able to modify the common law and keep common land under statutory authority. Would not the rights be much more complicated otherwise?—The rights of common were all made explicit by the Act. They were based either on levancy and couchancy or such other form as was generally approved in 1790.—*Mr. Qvist*: By the Epping Forest Act the common rights over the Forest have been very clearly defined. Unless it is in the Act, there is no right at all.—*Colonel Chappell*: Estovers were eliminated in the case of Loughton Village, as it was then. The lopping rights were bought by the Corporation and a sum of money paid to the inhabitants of Loughton for them.—*Lieut.-Colonel Buxton*: I think it would be

proper to say that the Act defined rights although they followed the lines of what went before.

2497. Does your system of administration, in other words, really depend upon the fact that you have been able to simplify the law under statutory authority?—*Mr. Qvist*: Yes, that is so.

2498. *Professor Stamp*: When the register of common rights was made, was any attempt made to register the lords of the manors and their rights?—*Lieut.-Colonel Buxton*: They were all completely bought out under the Act. In fact, the City was already lord of four or five manors.—*Mr. Qvist*: If they continued to reside in the area and owner/occupied land then, of course, according to the rules, they had individual rights of common, but all their rights as lords of the manors ceased with the passing of the Epping Forest Act and their purchase by the City.

2499. Did they, in fact, become commoners for your purpose?—*Lieut.-Colonel Buxton*: Yes, but only within the area of Epping Forest. Those of us whose parish the forest divides may still claim to be lords of the manors of what is left, though I expect most of us have given those rights up. One could not strictly say that the lords of the manors in those parishes have lost their rights: the lordships have been extinguished in the area which is coloured green on the statutory map, of Epping Forest. So far as the Forest is concerned, the lords of the manors have no powers whatsoever except as commoners.

2500. *Chairman*: In paragraph 6 you mention the Ancient Court of Verderers. Can you tell us what that is?—It was a genuine Court of Verderers which was restored for a short while under the Epping Forest Act of 1871. It had not functioned for nearly 100 years. There was a hope that if the Court of Verderers was restored, and the old royal forest organisation revived, that might solve some of the problems. The Court of Verderers was abolished however by the Epping Forest Act. We are called Verderers merely because in the past commoners had looked to the Verderers for their interests. It is a false name, but I suppose they thought at the time that it was an appropriate one for the representatives of the commoners. It is very misleading though to people acquainted with real courts of verderers. I suppose, too, that the revival for a

short while was necessary because progress was impossible without it. Epping Forest, as now defined, was one where the Crown, to the best knowledge of historians, never had any freehold right. The lords of the manors held their manors freehold with Crown forest rights superimposed over them. Perhaps it was as a result of that more than anything else that these old courts deteriorated.—*Mr. Qvist*: There is a specific Section of the Epping Forest Act which brings all these old courts to a definite end.

2501. As regards paragraph 7, can you summarise for us why there was so much opposition to the Bill?—*Lieut.-Colonel Buxton*: I think it starts from the fact that it was Crown forest. The Crown sold its rights to some of the lords of the manors for a pretty stiff price, £5 an acre, the Crown rights being more or less limited to the hunting of deer and the prevention of fences being too high. At the time the lords of the manors were persuaded that they would be enabled to inclose on very easy terms. The move to save Epping Forest—largely because it had already been accepted as of use to the people of London—had begun earlier than the general movement against inclosure. Opposition therefore grew and a legal action was fought by the City on the question of intercommonage between manor and manor. Several lords had gone a long way towards buying out their principal commoners and browbeating the others—all sorts of methods were used—in order to make better use of the land, as some people would have said. There was great agitation in Parliament about the particular position of the Crown. It had sold something to the lords of the manors which, if the case went against the lords of the manors, would look rather like sharp dealing. That complicated the affair, and controversy then raged not only about whether Epping Forest should be preserved as an open space but also about the particular means by which it could be preserved. The two issues went on side by side, a Commission being appointed to look into the first and a lawsuit being started as to whether the Corporation of London, by dint of owning Ilford Cemetery, had the right to turn out their cows over the whole forest or only over their manor. At first all litigation was stopped for the Commission to sit, until it was realised that the Commission had

nothing tangible to recommend unless the question of intercommonage was settled. There was a great deal of controversy at the various parties' expense. Over ten years various methods were tried to clear up the position. Meanwhile the Corporation slowly and gradually bought up some manors. Finally, to rid itself of the aspersions made against it, that the sale of Crown Rights had initiated the illegal enclosures, the Government promoted the Epping Forest Act of 1878. On the other side of the story, a great many people had already spent all they had on so-called freeholds on which they had built houses, and other buildings, and all that had to be the subject of arbitration under the new Act.

2502. Was there opposition from members of the general public as with many commons?—It came from numerous directions and in numerous ways, but it started with the opposition of the public to losing their open spaces, supported by the Corporation of London who wanted to do something for Londoners generally.

2503. *Professor Stamp*: In paragraph 7 it says that the timber and minerals were also purchased. Is any revenue derived from them?—*Mr. Qvist*: The working of timber is not undertaken as such. The woodlands are managed largely from an amenity point of view—I am not talking about commoners' rights now. The wood that is sold is of inferior quality—firewood largely—produced only as a by-product of the general rehabilitation of the woodlands.

2504. *Chairman*: Are you concerned with these woodlands primarily as amenity? Are the factors incidental?—Yes. The amount realised from sales of timber or wood last year was rather less than £2,500. It is never likely to be very large because of the restrictions imposed on our operation by the Act.

2505. And is there no income from minerals?—No. — *Lieut. - Colonel Buxton*: There had been gravel digging to a considerable extent before the Act. Geologically the land is a long gravel cap on a ridge on top of clay. There was a great deal of promiscuous gravel digging at one time: local authorities had rights for gravel for roads. Practically no gravel is taken now, even for our own uses.

2506. *Dr. Hoskins*: If the income from timber is only about £2,500, where does the remainder of the income, about £11,000 come from?—*Mr. Qvist*: From various licences which are granted. There are big holiday fairs at Easter, Whitsuntide and August Bank Holiday on each of two sites in the forest, and these bring in a total of about £4,000. There are boating licences on the forest ponds which account for a thousand pounds or two. Between £1,600 and £1,800 is derived from the public golf course at Chingford, though against that there has been rather greater expenditure on the other side of the account. There are wayleaves of various kinds which bring in about £1,000.

2507. Is the rest of the income from miscellaneous items?—*Yes*.—*Lieut.-Colonel Buxton*: Almost all the items, except the traditional fairs, cost more than they bring in.

2508. *Chairman*: Turning to paragraph 9, do you in fact fence areas of forest for replanting?—*Mr. Qvist*: None of any significance whatsoever. Just one or two very small places might be fenced perhaps, to protect one or two particular trees, but we have made no practical enclosures of any kind. Two have been established in recent years when, to mark the Coronation, it was felt desirable to enclose and protect a few trees. One of these two areas was laid out through the action of a group of forest residents in the south who took an active interest in the forest: on Wanstead Flats an open space that is almost treeless, they asked for, and were granted, permission to establish a plantation. Another one has been established in the centre of the forest by the Conservators, but apart from that the amount is negligible.

2509. For how long do you keep the fences up?—*Lieut.-Colonel Buxton*: May I quote the Act?—'For the purpose, only so long as is necessary for the attainment thereof'.

2510. Would that be for fifteen or twenty years?—*Mr. Qvist*: Not less than that. Unfortunately, we suffer in the south from a certain amount of vandalism, and it would naturally be our intention to keep the trees protected as long as possible—until they are big enough.—*Lieut.-Colonel Buxton*: The sites of such enclosures have to be rather

carefully chosen. In the ordinary way they are very small ones. Otherwise they get pulled or knocked down by deer and cattle or taken for firewood, so that often such enclosures have not proved practicable except under close supervision. But under the Act we can enclose so long as the enclosure is necessary to attain its purpose.

2511. What is the natural aspect of the Forest which you refer to in subparagraph (vi)?—It varies very considerably but our policy is for it to become open woodland.

2512. Not a wood or forest as William the Conqueror knew it?—*No*. As we say in paragraph 16 (i), 'The natural aspect of the Forest which, by the Act, it was incumbent upon the Conservators to preserve, had, in the woodlands, first to be recreated.' There is this difference; under a pollarding system there was a very varied field layer. Half the forest at least was heather underneath, which has now disappeared, and many other pleasant forms of undergrowth existed. Because of that long established system letting in the light there was this 'natural' undergrowth to which people had been accustomed for many generations; but of course pollarding stopped under the Act and this 'natural' undergrowth was suppressed. It is best not to be more rigid on our definition than in the words of the Act itself (Section 7 (3)), 'As far as possible to preserve the natural aspect of the Forest', because if we embark on a more scientific definition it means so many different things to different people.—*Mr. Qvist*: The phrase seems something which is more easily understood and recognised than defined. We can show you an area which is almost as it was at the time of 1878 comprised of nothing but coppices and pollarded trees. I think you would readily recognise that the aspect is certainly not natural; you can see other areas which I think you would agree tend more to the natural aspect.—*Lieut.-Colonel Buxton*: Pollarded trees have there been allowed to grow up without a rotation of pollarding and choke everything. When the trees were pollarded they gave a different aspect from what they give now. We have set aside an area where we have pollarded a certain number of trees and intend to continue that rotation to try, as an experiment, to reproduce the earlier conditions.—*Colonel Chappell*:

Although it might be difficult to define 'natural aspect' as such, it is possible, I think, to define the natural aspect of any individual tree. Hardly any tree existed in its natural aspect in the forest until the Corporation took it over. Now what we are trying to produce—by thinning and otherwise—are specimen trees for future generations—oak or beech as it should be, without interruption or interference from man or beast.

2513. Were the plans mentioned in paragraph 10 deposited, so that you can now define accurately what are the limits of the forest?—*Mr. Qvist*: It was provided in the Act that a plan of what was subsequently to be the whole forest area was to be formulated, and three copies were deposited, one at the Guildhall, one with the Public Record Office, and one with the Essex County Council at Chelmsford. Since then a further map has been prepared.

2514. Has that been done by a survey?—By a reconciliation of all records rather than actual field survey, though of course all the forest land is known to those who have compiled the plan. It was not necessary for them to go out into the field. The City of London (Various Powers) Act, 1956, gave force to the new map.—*Lieut.-Colonel Buxton*: The conservators started operating on the firm basis of a map. It was, however, only recently realised that the bits added to the Forest since the original map was prepared had not been registered in the same way. So we had to have a special survey, and, as *Mr. Qvist* has said, under the Corporation's Act last year all the new bits were added on to the old plan. Revision in this way is a matter of importance when there is a map to start off with.

2515. *Professor Stamp*: What is the scale of the map?—*Mr. Qvist*: The original arbitrator's plan was 25 inches to the mile.

2516. Using the standard Ordnance Survey map?—Yes.

2517. Do you keep the equivalent of a forestry working plan for the tree maintenance?—Not what is currently accepted as a working plan, although we are in the course of compiling a complete record of all the woodland and forest

area.—*Lieut.-Colonel Buxton*: The old records show which areas were thinned each year, but there is no schedule sufficient to show the exact treatment.

2518. Would you say as a result of your experience, that having a detailed map on a 25 inch scale and keeping records up to date was an important part in the management of an afforested common?—*Mr. Qvist*: I think it would be an extremely helpful part of the management. There has obviously to be a basis of management and in practice there has been one throughout the Conservancy's existence, even if it has not been reduced to the generally accepted record form. Obviously if it is reduced to record form it is helpful to anyone suddenly entering the management, but there has always been continuity in the forest management. One can say a record has existed, although perhaps not in book form.—*Lieut.-Colonel Buxton*: I would like to call attention to one important fact about the legal status of the plan. It is based on green colouring by a draughtsman. Of course, there are places where it could be argued that the draughtsman slipped a bit in his colouring, but we have quite rightly to stick to something definite, which is the green line. But the real width of narrow roads and tracks, at the time the plan was made, is open to dispute, so that anybody following the principle would be very wise to have a schedule made of the width of such tracks, because they cannot really be defined exactly on a map of this scale.

2519. I am sometimes told by lawyers that they do not expect to have to look at a map, and that the definition of the land should be in phraseology, the map being just a casual illustration. In this case is the position the reverse?—The map is not a casual illustration. There is the arbitrator's signature on the map to certify that the map defines the Forest.—*Mr. Qvist*: The Act of 1878 refers to the map and therefore it has a force which perhaps a map does not have in an ordinary legal transaction.

2520. *Chairman*: Is not the point that your map has statutory authority, whereas a map attached to a conveyance is merely to make it easier to read?—*Lieut.-Colonel Buxton*: Yes. May I say a word about the arbitration? I think it

is a point of interest to this Commission because of the disturbance there was originally. The arbitration was carried out by one man, Arthur Hobbhouse. He had absolute discretion over what the Corporation should pay out to those who gave up rights and quit rents and what others should pay for being allowed to stay and so on. Nothing was challenged afterwards and everything accepted. Within about three or four years, there was no further rancour or recrimination. It is rather important to remember when people say how dreadfully difficult it is to solve these things, that one man settled all the difficult high financial problems in this case.

2521. Did he work continuously for four or five years?—I think it took him about three years. Within five years of his arbitrations being settled the whole controversy died out and everybody felt there had been a fair solution all round. It is rather significant that an arbitrator could settle the whole issue after all the suspicion and rancour there had been.

2522. *Sir George Pepler*: You refer in paragraph 11 to parishes with common rights extending into West Ham. Are there not quite a number of pieces of the common on your map which could almost be described as roadside waste?—Yes.

2523. What happens when the local authority wants to widen a road, for example?—*Mr. Qvist*: They negotiate with the Conservators, who meet their requests as far as possible.

2524. Are they required to exchange land or supply any alternative?—*Lieut.-Colonel Buxton*: Permission is given for cash or other consideration, and in fact the local authorities can still only make their road over the top of the forest land. That land remains intrinsically part of the forest—we cannot part with it, but can merely grant the right to use it.—*Mr. Qvist*: The roadside verges now in existence are almost solely towards the northern part of the forest. In the south they have long since been absorbed into the highway. West Ham is a forest parish, and the amount of forest land that lies in West Ham is part and parcel of the main block, not detached pieces.—*Lieut.-Colonel Buxton*: Harrow Green, Leyton, and the war memorial

with its gardens are both on forest land. But the strips running right away into Waltham and other places are equally important. Originally they were used to bring cattle onto the common; now they are to some extent very desirable for the public. Some are built in on both sides—some running through Chingford for instance, where the houses stand back on to a strip of forest—a No-Man's Land—down the middle. It is a path, yet it is part of Epping Forest: that sort of situation creates difficulties. One way of settling them is to give the care and maintenance of these small strips of Epping Forest to the local authority.

2525. *Chairman*: Paragraph 13 says that Reeves are appointed on the nomination of the Parish Councils. Do you get full collaboration?—*Mr. Qvist*: Yes. It is a statutory provision that they nominate the Reeves.—*Lieut.-Colonel Buxton*: We have the power of objection.

2526. Turning now to paragraph 16, are you opposed to the practice of pollarding?—Not entirely. There is an appeal about the old pollard system, which for historic reasons we should not wish that it should entirely disappear.

2527. To what extent do you seek natural regeneration—compared say with Burnham Beeches?—We practice it on a much vaster scale of course; it is even more important to us in Epping Forest than at Burnham.

2528. *Professor Stamp*: Is any difficulty experienced in protecting tree seedlings as a result of public access?—*Mr. Qvist*: I have little doubt that success would have been more rapid and more could have been done towards rehabilitation if the public, and cattle and suchlike could have been excluded, but what has been achieved in the matter of natural regeneration of Epping Forest is perhaps remarkable for having been done in spite of these difficulties.—*Lieut.-Colonel Buxton*: The reason may be partly the streamlined habit of animal roving and graded nature of the regenerations. We cut vistas to give the public a view, and they nearly always fill up again with holly clumps and new trees: then we cut a vista somewhere else. The amount of regeneration, in spite of the cattle, deer and public, is surprising. If

the ordinary traffic of deer, cattle and public is only slightly deflected natural regeneration comes on quite well. Rabbits have not been a serious menace; there have been sudden flushes of them on a few occasions in the last 50 years, but on the whole we have been surprisingly free of rabbits. Of course poachers help to keep them down.

2529. *Dr. Hoskins*: Is there some special reason—it happens so very rarely—why the hornbeam flourishes so well in Epping?—Because of its encouragement throughout history as deer fodder. Its outstanding quality is that one can lop the branches off and then make it grow again. Otherwise, except for skittles, it has very little use—apart from its beauty, of course.

2530. *Chairman*: Next we come to paragraph 17. Do you allow motor cycle racing?—No. But to refer to motor cars, there are places where motorists really help the turf quite a deal. Our policy is to allow them to enter the Forest for pleasure purposes, between an hour after sunrise and an hour before sunset. We encourage them to penetrate in small numbers as much as possible because of the great pleasure it gives; we control the traffic very largely by digging ditches where the motorists are doing too much harm. We can order them off under our bye-laws. If kept under control, the motor car is not a menace, though it may be in places. Cars can do considerable harm in some small corner but, speaking generally—I think the Superintendent would support this—the pleasure obtained is immensely more important than the risk of damage to the forest. There must be control to some extent, but we exercise it leniently.

2531. Does this tolerant attitude depend on the fact that you have a staff to look after things, and can spend a good deal of money?—Yes. But I am afraid the staff could not cope with the matter were no physical obstacles imposed.

2532. *Sir George Pepler*: Is litter a big problem?—*Mr. Qvist*: It is a terrible problem. Unlike my colleague at Burnham Beeches I would not say that we are satisfied with what we are able to do, nor would I share his view

that if there is a litter bin within a hundred yards people will use it. The keepers do their best to keep the Forest tidy. The problem is at its worst, of course, in the summer time and at week ends.—*Lieut.-Colonel Buxton*: I think a very important and rather modern development in the litter problem—one which deserves attention—is the dumping of builders' refuse, old beds and similar things in the middle of the night. That is a disgusting form of litter. Occasionally a label or something to identify the culprit is found and a civil action is possible, as well as prosecution under the bye-laws, with their miserable £5 penalty.—*Colonel Chappell*: Broken glass is the most dangerous form of litter and is caused largely by children setting up a bottle and throwing stones at it. When we made posts for the horse rides, we had to bevel them all to prevent that sort of thing.

2533. *Chairman*: Is any military use made of the Forest?—*Mr. Qvist*: Permission can be and is granted for units to conduct simple exercises in the forest. It generally amounts to use only by the local cadet units or A.T.C. and a few Territorial units. The Forest is not used for large scale military manoeuvres.

2534. In paragraph 19 (i) you mention another court, the Court of Attachments. Has that disappeared?—*Lieut.-Colonel Buxton*: Yes. The Verderers were only temporarily reconstituted between 1871 and 1878, to re-establish that court.

2535. Coming to sub-paragraph (iii), is it not possible to make the whole area an eradication area?—*Mr. Qvist*: That has never been considered. I have received one or two tentative enquiries from what might be termed interested parties, but nothing has ever come forward for serious consideration.—*Lieut.-Colonel Buxton*: The trouble is that we are a 'poor man's' common at the moment. To get progress rich farmers would have to be interested to a certain extent in the grazing. I am afraid there is little chance of getting real enthusiasm about that sort of thing until there is some move by the Government to give more encouragement to commoners generally. It is not easy to hope for any great improvement when at present it is rather those whose herds are not T.T. who turn their cattle out.

2536. *Mr. Evans*: Would you like to see a fairly big increase in the agricultural use?—Yes, in the use for grazing. It is pathetic not to have the amount of grazing we had before.

2537. *Professor Stamp*: Referring to grazing animals, what is the number of deer?—*Mr. Qvist*: The deer do not really affect the grazing; they confine themselves to the woodland and rural area of the Forest. The grazing area lies largely in the south, in the urban area, and the deer do not venture down there now.—*Lieut.-Colonel Buxton*: It would be true to say, though, that when there were up to 200 deer the glades in the north of the Forest were better. The mixed grazing of deer and cattle was very advantageous when we had more deer. Their reduction in number is a sad loss from the point of view of keeping down the measly scrub in the glades, as opposed to decent outgrowth.—*Colonel Chappell*: The clearings in the Forest are in fact being very much invaded by birch and thorn as a result of the reduction in cattle numbers.

2538. What is the number of deer now?—*Mr. Qvist*: It would not be more than 75, perhaps even less.

2539. Are the deer the private property of the Corporation?—By the Act the ownership of the herd is vested in the Conservators, who have an obligation to try to preserve them.

2540. *Sir Donald Scott*: Are they a danger to the general public at certain times of the year?—*Lieut.-Colonel Buxton*: No, nor at any special time. The public is a greater danger to them and losses are heavy on the roads. It is a Black Fallow herd; they are distinct in shape from the New Forest Fallow, and probably are now the only really typical wild type because all other Fallows have crossed with Park deer. Some Park deer have even infiltrated to us. The herd is a precious one to preserve for that reason; it is very anxious work. They are killed by cars, and their numbers are not kept up as one would like.

2541. *Professor Stamp*: Are there any special facilities for their breeding?—*Colonel Chappell*: No. We have no power under the Act to enclose for that purpose.—*Lieut.-Colonel Buxton*: The

problem is causing us some anxiety. We cannot enclose any land; in the past there were one or two places where benevolent land owners gave the deer sanctuary, but they cannot do that now. With wild animals it is not necessarily direct persecution and the increase in the number killed that are the worst worries: with so many more poaching dogs about, and with the large urban population, it is the restlessness of the wild animals themselves that is the cause of the trouble. They really need a sanctuary; but to effect a sanctuary in the middle of the Forest is to ask everybody to rush and see it, and thus defeat its purpose.

2542. *Sir Donald Scott*: Are any sheep grazed?—No. There could be though.

2543. Have there been any in fairly recent times?—*Mr. Qvist*: I have no record of any.—*Lieut.-Colonel Buxton*: I think there may have been minor instances. Sheep were being grazed at the time of the Act in 1878, but the right has never been used since. Another right not used now is pannage. That is unfortunate because one of the difficulties in the Forest is that the public trample down the soil very tight in the places where they wander frequently. The pig is an ideal forest soil manipulator. We are doing some artificial 'pig work' now with disc ploughs but pannage is an enterprise: it looks easy, but a skilled man is needed to train the pigs to come back to their centre. But there has never been sufficient keenness among the commoners to train up a swine herd. You cannot let pigs go loose, since, to avoid dispersal, they must come back home at night to a centre.

2544. *Mr. Evans*: Under the Act you are not permitted to erect fencing. Would it be an advantage if you were permitted to do so?—We can fence temporarily for the repair of turf and such things. I think we have ample powers.

2545. Are they ample to realise the stock carrying capabilities of the Forest?—The Forest is so enormous that fencing against the roads and that sort of thing would be a big problem. Any possibility of fencing, I think, would depend on whether the commoners were sufficiently keen. We do fence in order to restore land from overgrazing or war-time occupation.

2546. It is interesting that the rights of common are not more used. Is not the representation of commoners on the conservators four out of sixteen?—*Mr. Qvist*: Yes, four verderers represent them on the Committee of sixteen.—*Lieut.-Colonel Buxton*: Commoners' rights were considerable at the time of the Act of 1878, and although the public were given a legal right over the Forest

by the Act—it was in fact one of the first Acts by which the public were given a legal right—they really owed their access to the commoners. At the time the commoners were very sensitive to their rights receiving proper recognition.

Chairman: Thank you very much indeed for the very great assistance you have given us. It has been very interesting indeed.

(The witnesses withdrew)

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MINUTES OF EVIDENCE

20

Wednesday, 28th November, 1956

WITNESSES

The National Farmers' Union



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WEDNESDAY, 28th NOVEMBER, 1956

MR. HAROLD WOOLLEY

Deputy President

MR. J. F. PHILLIPS

Assistant General Secretary

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Wednesday, 28th, November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.L.,
F.R.I.C.S.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence submitted by the National Farmers' Union

1. The National Farmers' Union welcome the opportunity of submitting to the Royal Commission the following observations on the matters falling within the Commission's terms of reference. The Union is, of course, a voluntary association of occupiers of agricultural land, formed in 1908 and having a present membership of upwards of 200,000 farmers in England and Wales.

2. In an effort to provide such assistance for the Commission as was possible, for the purpose of assessing the area of land coming within their terms of reference, the Union asked their County Branches to provide such material as they could on the subject.

3. The view is generally and firmly held in the Union that the beneficial and productive use made of common land is far less than could, and ought to be, the case; and that the main impediment to the full enjoyment and use is the complex and archaic law applicable to common land.

4. The Union feel that in considering amendment of the law in order to bring it into conformity with modern ideas and needs, no simple proposal for uniform treatment of common land is practicable, in view of the great variation between the rights exercisable in respect of, and the use made of, types of land all described as 'commons'. To-day in fact there is no real connection between the Metropolitan common to which the public have a legal right of access and over which in many instances the commoners and the lord of the manor have long since ceased to exercise any rights, and at the other extreme, the truly rural common, over which valuable rights of common of pasture are exercised, and to which the general public have no claim to access.

5. The Union would wish first to refer to those rural commons which have a significant value, actually or potentially, in the food production field. Here the Union believe that the objective of new legislation should be to provide for the proper regulation of such rural commons, to make possible and to stimulate the optimum contribution to food supplies.

6. The Union accordingly believe that provision should be made for the promotion of schemes which would vest in the representatives of a majority of the persons having an interest in a given common, executive power to take such measures as fencing, drainage, provision of water, stinting, improvement of grassland and the like, in order that the potentialities of the common may be fully used. Generally, the aim of any new legislation in this connection should be to endow commoners with the maximum degree of self-government of the land subject to common rights, and to reduce to the minimum the restrictions and limitations on their right to secure full and efficient use of the land.

7. The union also feel that the same facilities, rights and duties which apply in the case of land owned and occupied severally should be made equally applicable to such common land, once it has been made the subject of such a scheme as is proposed above. Thus, the common in question would be eligible (if in other respects the relevant conditions were complied with) for benefit in respect of capital and production grants, such as improvement schemes under the Hill Farming and Live-stock Rearing Acts, the provision of water supplies, ditching and drainage schemes, assistance under the Marginal Production Scheme operated by the Minister of Agriculture, and the like.

8. Care must be taken, in the Union's view, to provide proper safeguards in the formulation and promotion of schemes for the regulation and management of particular commons. Even in the case of rural commons over which the public have no rights of access or otherwise, the rights, based on customs, of the commoners vary widely, one from another. Machinery must therefore be established by law to ensure that proper weight is given to all interests. This machinery, the Union believe, should be of a legislative and administrative, rather than a judicial character; and should be the responsibility of the Minister of Agriculture.

9. Accordingly, power might be given to the Minister, either upon application or of his own motion, to nominate persons and/or bodies to promote a scheme for a particular common, and in default to promote the scheme himself. The legislation might specify the matters which should be covered by the scheme dealing in particular with the constitution, powers and duties of the executive or management committee of the common. It is, in the Union's view, fundamental that in framing the constitution, the principle above mentioned, of self-government by the owners of interests in the common land, should be upheld and safeguarded. Provision should be made for the official publication and advertisement of the scheme, for the submission of objections, and for the holding of a public enquiry in appropriate cases. The legislation might also require that Parliamentary control be secured in respect of such schemes by making them subject to annulment by resolution of either House.

10. The Scheme should not necessarily be confined to declaring and facilitating the exercise of existing rights in respect of the particular common. Statutory power should be given to propose therein, the modification of such of the rights as may be considered necessary in order to secure the full and efficient use of the land for food production.

11. The power to formulate and submit schemes for the proper regulation of common land should include power to submit a scheme for the partition of the land among the persons interested, so that thereafter the land would be held in separate parcels by the former commoners and others.

12. The exercise of power to modify existing rights or to partition should be subject to all proper safeguards for the ascertainment of the persons entitled to any interest in the land, and for proper compensation to be paid in respect of any such

interests which are diminished or extinguished. Moreover, as respects cases in which proposals are made for proprietary interests to be diminished or extinguished, consideration should be given to providing a right of appeal to any person aggrieved, e.g. to the Agricultural Land Tribunal (by analogy with the procedure under Section 85 of the Agriculture Act, 1947 referred to later in this memorandum).

13. Reference has been made in the proposals outlined above to the vesting of power in the Minister, subject to Parliamentary approval. It may well be considered desirable to provide for special administrative assistance to be provided for the Minister in the exercise of his statutory powers and duties, either through some existing body such as the Agricultural Land Commission, or by a newly constituted body of similar character but designed for the express purpose of promoting the best use of common land.

14. The Union do not of course rule out the application of the proposals outlined above to cases in which the public have legal rights of access. In such a case provision would no doubt have to be made for the representation of the public interest through the medium of the appropriate local authority or otherwise both in the formulation of the scheme, and in its administration if and when approved.

15. There are, however, also cases in which no appreciable use is at present made by commoners or the public of certain common lands. Much of such land was requisitioned during war time under emergency powers and made a significant contribution to food supplies. That land has largely been derequisitioned though some has been acquired by the Minister of Agriculture under Section 85 of the Agriculture Act, 1947. Where it can be shown that it is impracticable to expect that productive use will be made of the land in the absence of the exercise of statutory powers, the Minister might be empowered to acquire the unincumbered freehold interest in the land, with a view to the disposal thereof for productive purposes—normally agriculture, but possibly also, in appropriate cases, for afforestation.

16. Cases have also arisen in recent years in which steps have been taken by Government Departments or public or local authorities to acquire compulsorily fertile and well-farmed agricultural land in private and several ownership and occupation, while there is in the vicinity common land of which virtually no beneficial or productive use is made, and which would provide a suitable alternative site for the development for which the privately owned land has been acquired. This is due to the very considerable difficulties which confront any body seeking to exercise powers of compulsory purchase against common land. The Union feel strongly that the law should be amended so that common land in this respect should be placed on precisely the same footing as land which is privately owned and occupied.

17. It is, of course, regarded as axiomatic by the Union that if land, in the cases referred to in the last two paragraphs, is in fact acquired, the owners of all interests therein shall be fully compensated.

18. As mentioned at the beginning of this memorandum the National Farmers' Union is very glad to have the opportunity of submitting this brief memorandum of evidence to the Royal Commission, and will be happy, through its representatives, to attend to give oral evidence on the matters considered above, or any others with which the Royal Commission would wish them to deal.

Examination of Witnesses

MR. HAROLD WOOLLEY and Mr. J. F. PHILLIPS on behalf of the
National Farmers' Union

Called and Examined

2547. *Chairman:* May I thank the National Farmers' Union for providing us with their memorandum and for agreeing to amplify it orally this morning? On paragraph 1, how far is the National Farmers' Union with, as the paragraph

says '... a present membership of upwards of 200,000 farmers' representative of the farmers in England and Wales?—*Mr. Woolley:* It is very difficult to define precisely how many farmers there are in England and Wales.

I think the total figure of those who occupy more than one acre of land, which is the usual definition, is something over 300,000, but one certainly should not imagine that all the people in that category are farmers. We estimate roughly that about 90 per cent. of the farmers in England and Wales are members of the National Farmers' Union. That is a fairly general sort of figure, and although not absolutely precise, is, I should think, as fair an estimate as could be made. It is the figure we generally work on.—*Mr. Phillips*: Yes, indeed; we say 90 per cent. when we are being conservative.

2548. Is your experience that there is an unsatisfied demand for agricultural land?—*Mr. Woolley*: Yes. My own feeling is that, with a population as large in relation to the area of the country as it is in Britain, unless agriculture is extremely depressed there is always likely to be a greater number wanting to farm—because of the natural instinct to be associated with the land—than can farm. That is really the basis of the demand for land. I think it is true—and the long list of county council smallholding applications shows this—that there are many people who want to get into farming who find it difficult to do so. But that I think, is an inevitable problem in this country, unless agriculture is in a very bad state indeed. Of course, we had that state of affairs in previous times, and landlords had to take farms in hand, but that is only likely to arise in bad conditions of that sort.

2549. When did that state of affairs last occur?—About the late 1920's and early 1930's. Those few years were the acute period.

2550. Since much common land is marginal land, is there a demand for it only in a time like the present when there is a strong demand for land?—Yes, I think that is true. Of course a great deal of common land is attached to farms situated lower down the hill and is a part of the balance of their structure.

2551. *Professor Stamp*: How have your county branches collected information about commons? Have they been in close touch with the county agricultural executive committees?—*Mr. Phillips*: When we were contemplating

the preparation of our evidence we thought, as a first step, that it would be helpful to find out from our county branches what, in their opinion, was the acreage and nature of the common land in their respective counties. The county branches of the Union—there are 60 county branches and over 1,000 local branches—did not all act in the same way in collecting this information. Inevitably, some of them took what was perhaps the easiest course of consulting the county agricultural executive committee, since the committee had some sort of register of occupiers of land and were more likely to have access to authoritative and reliable information. Not all branches did that, and indeed I believe that when some of them started doing it the Ministry of Agriculture instructed county agricultural executive committees not to communicate this information to the National Farmers' Union. We had no quarrel with that attitude because the aim was to get an independent check. If there is close similarity between our information and the C.A.E.C.'s it probably means that the county branch of the Union went first to the county agricultural executive committee for authoritative information and to a very great extent adopted it as their own. The reason why some did not do so is either that they asked the committee after the Ministry imposed the embargo or else that they deliberately went about it in their own way. I should like to emphasise that, having regard to the very short time available to our county branches to collect the information and to the pressure of so many other aspects of agricultural life which bears continually on an organisation like the N.F.U., too great reliance should not be placed on the accuracy and sufficiency of the details of the information. It is, however, the only assessment of the value of common land generally that we have.

2552. The National Farmers' Union will know that during the war the county war agricultural committees went over all the various commons in connexion with the ploughing-up campaign and assessed those which it was thought could be ploughed and improved but rejected others either because of the quality of the land or for some other reason. Now if, say, one of your county branches in response to your enquiry has

reported that a common has 'No potentialities', how has that assessment been reached?—That comment would represent the accumulated fund of knowledge and experience of local farmers concerning that common.

2553. Would a very large proportion of common land in many counties have very little or no agricultural value?—Undoubtedly, out of the vast acreage of common land—two or two and a half million acres, perhaps, in all—there must be a substantial proportion that could not be much better used than it is at the moment; but the total also comprises a very large acreage which is capable of substantial improvement. After all, that was shown by the acreage requisitioned by the Ministry of Agriculture during the war years for food production.

2554. *Dr. Hoskins*: Did not the Ministry of Agriculture requisition altogether about 20,000 acres, which is 1 per cent. of what we believe to be the total acreage of all common land?—I understand that the figure is approximately 21,000 acres.

2555. That is about 1 per cent. of the total. Does that represent, in your opinion, the whole amount of common land which is potentially of greater value than at present?—*Mr. Woolley*: No, because a great deal of the requisitioned land was taken for actual cropping. I think that most of the improvement could come about by the greater use of fertilisers.

2556. I appreciate that. I really want to know whether, in your opinion 1 per cent. is the proportion of common land likely to be of use for cropping?—I am afraid I could not give any answer to that other than to assume that what was done by the War Agricultural Committees under wartime pressure would appear to indicate what was found at that time to be worth while to crop. I think that it gives a fair guide at any rate. Cropping is a rather more intensive form of improvement than would generally be applied to commons.

2557. *Chairman*: Would you think that the proportion is less than 1 per cent., because the demand for crops in wartime obviously was very much higher than it is likely to be in normal times?—I would say that the figure of 1 per cent. was probably a fair guide, but I really could not go further than that.

2558. *Dr. Hoskins*: Does that mean that you do not really attach very great importance to the improved use of commons by cropping, and regard it as a very small aspect of the problem?—It is rather a fringe element in improvement. I should say that a far greater element lay in draining and the increased use of fertilisers. That is the sort of improvement we envisage—and, of course, there would be many instances where ploughing up and reseedling would be a necessary part of improved grass production.

2559. *Professor Stamp*: Do you think a survey of the potential value of common land is important?—I think we would take the view that there is no formula that can be applied as a general pattern for common land in England and Wales, and that the only way of tackling the matter in a businesslike way is by reference to each common. Insofar as that involves a survey, at any rate one by stages, such a survey is necessary.

2560. *Chairman*: In paragraph 3 you use the phrase 'beneficial and productive use' and also the words 'full enjoyment'. By 'beneficial and productive use' are you thinking wholly in terms of the agricultural use?—We were really thinking more in terms of the agricultural use in employing this phrase. I appreciate though that the phrase immediately makes one think of other forms of use.

2561. You say in the second sentence of paragraph 4: 'Today, in fact, there is no real connection between the metropolitan common to which the public have a legal right of access and over which in many instances the commoners and the lord of the manor have long since ceased to exercise any rights, and at the other extreme, the truly rural common, over which valuable rights of common of pasture are exercised, and to which the general public have no claim to access'; do you really mean 'no right of access'? We have had evidence that the general public claims access to all common land?—I think 'right' is the word rather than 'claim'.

2562. *Mr. Arnold-Baker*: Do you also mean that you would rather the public did not have access to this sort of common?—Yes. We certainly do not want to adopt a dog in the manger attitude to the question of public access, but we do

feel that for the majority of the rural commons the emphasis should be upon the contribution that they can make to food production. Where there are properly established public rights of access we would not wish to stop them or to advocate that they should be stopped. We think that, in so far as it can be reconciled with improved agricultural methods, access should be given subject to some reasonable form of control—perhaps by laying aside a part of the common over which the public could have free access where that is already established, or perhaps by dedicating footpaths. Ploughing up a common in order to reseed it and improve it generally obviously becomes virtually impossible if the public are to have access over the whole common during the process. We feel that in a case like that that it would be possible to allow uninhibited access to a part of the area, and to provide for footpaths, fencing, stiles and so on, if necessary. We want to find a balance between the two interests. Certainly we do not wish to deny the public access where it is reasonable and properly established, but we do not think that public access should be given more significance than it deserves. Its significance varies in degree—from the metropolitan common which, of course, exists for air and exercise, down to the rural common which is really purely for the pasturage of cattle and sheep. Somewhere in between those extremes we want to find a reasonable balance.

2563. *Sir Donald Scott*: If the public would have to be kept off during ploughing-up and reseedling in the early stages, would you visualise allowing them into the area again once the new field were established?—That is a question of degree again. One can envisage that under an improvement scheme some of the land should perhaps be mown or even cropped. Obviously public access there would be prejudicial. I think that the aim should be to give the public reasonable access but not to exaggerate the need for public access to the point where they are given an access which is unnecessary for the proper enjoyment of their rights and unduly prejudicial to the agricultural use of the common. It is very difficult to be more precise than that, but I think the two uses can generally be reconciled. Whereas some people would probably emphasise the

public access element very much, we, while recognising it, try to bring it into proper perspective with the farming aspect.

2564. *Professor Stamp*: You draw a contrast in this paragraph between the metropolitan common, where the position is defined by law, on the one extreme, and what you call the truly rural common over which valuable rights of common of pasture are exercised, on the other. Would you agree that there is a tremendous gradation between those two?—Yes, indeed.

2565. You said just now that each common ought to be considered as a unit and on its own merits. Is it not going to lead to extreme complication and difference of treatment all over the country to have every common treated quite separately? Let me put it another way. Is it not possible to visualise from your Union's point of view a classification of commons—let us say metropolitan commons, village greens, commons where public right of access for one reason or another is paramount, and which may be of limited agricultural value and so on; would there not then be greater uniformity of treatment over the country as a result of the classification, different laws or rules being applied accordingly?—I think there would be a lot of merit in a broad classification. But I wonder how would it work in practice. I suppose that the Minister of Agriculture, in authorising a scheme, could lay down certain conditions about public access for which his yardstick would be the classification into which the particular common fell. I think there would be merit in that. Otherwise there might be a very great degree of variation in the interpretation of whatever general principle was laid down for the extent of public access to be allowed. Of course, commons are so variable that any classification has practical difficulties, but I think if one can be made—and I would not like to say, because I am not sufficiently expert to know, whether it could be made realistically—then I would be entirely in favour. I think it would probably make it much easier both for the people making the decisions or recommendations on the spot and for the Minister in giving his authorisation. But this is only my off-the-cuff reaction.

2566. *Mr. Arnold-Baker*: Might I put the question the other way round, to see what you think of the antithesis? Is there any real objection to an infinite gradation in approach—taking pieces of common land all over the country, and considering local living conditions, local habits of husbandry, and so on?—*Mr. Phillips*: We should like to see the benefits of both methods. As *Mr. Woolley* has already said, we entirely agree that there is a very considerable gradation between the two extremes mentioned in our paper. We were aware of that and only mentioned the extremes. Elsewhere in the paper we have suggested administrative devices for the promotion of schemes applicable to individual commons. I think we all hoped that some sort of pattern at any rate would emerge from these schemes, but I would not like to express too firm a view whether it is right to evolve the pattern first and then attempt to compress individual commons into one class or another, or whether it is better to gain experience as commons schemes are dealt with one by one to allow a pattern to emerge by building up a body of case law so that the person responsible would say 'This is another case like Black Acre'. We would like there to be a pattern, but whether it should precede or follow the examination of individual commons is an open question.

2567. *Professor Stamp*: I can foresee one difficulty. In a certain county which is close to a very large urban area and over which urban influences are very strong, the voice of the N.F.U. might be swamped completely and the agricultural viewpoints would not possibly receive the proper representation: on the other hand, in another county in a part of the country the N.F.U. might, for the sake of argument, be so strong that no voice dare be raised against them; there the reverse might be the case. Would you agree that there would be very different treatment of common lands in two such different counties?—Does that not postulate that it will be for the County Council to determine the treatment to be accorded to the common land within its boundaries? That is not our view. Our opinion is that the persons having proprietary interests in the common—that is, the lord of the manor, the persons exercising rights of common of pasture, representatives of the public (if

indeed they have established legal rights of access)—should, together or separately, promote a scheme which would come under the surveillance of the Minister of Agriculture. It may well be that the County Council, as the representative of the general public in the county, would have a voice, but only in that capacity, it would not be the authority for the regulation and definition of the rules and constitution of any schemes for common land.

2568. Would you not agree that commons are not by any means enjoyed entirely by local people or the people of the county but also by those who come from a distance? Let us take Devon and Cornwall, where the great interest in common land is not from the people who live there throughout the year so much as from those who visit the area during the summer. Is it not a national rather than a county matter?—That is one argument, I should have thought, in favour of giving the responsibility to a member of the Government rather than to a county authority.—*Mr. Woolley*: I think that if one envisages an improvement scheme being put forward for a common of the kind where there is an established right of public access, one of the considerations in the scheme would be the nature and extent of public access that there should be within the scheme. It is very difficult to define in general terms what the access should be, but obviously if a Minister were approving a scheme he would look at it on the basis of the facts of the particular common and the degree of public recreation that was desirable in that particular instance. It could be that a common in one part of the country would call for greater public freedom of access than would a similar common in another part of the country, because of its natural beauty for example. We want full account to be taken of the public access element, but we do not want it to be weighted unduly. I can see that a precise set of rules about the degree of public access to be afforded would be very helpful to a Minister, in the broad sense, but in its practical application it could be a handicap: there might be a case where, within the classification and definition that had been made, public access was to be very restricted and this might lead to a very great public outcry.

2569. Let us take a county with which you may be familiar—Cheshire. There the existence of Manchester and certain other urban centres near at hand may at times, I believe, give rise to some pressure on the possible use of open spaces. If they were taken on the basis of an individual or county-by-county approach, different decisions might be reached from those reached on the basis of a national approach. Which approach should it be?—If the power to authorise any scheme put forward resided with the Government, through a Minister, in parts of the country like Cheshire he would give more weight, I think, to the effect that the scheme would have on public access than he would where the common land in question was in a more remote part of the country where public access was neither used nor likely to be required. We would say that the approach should be flexible to that extent. We certainly do not think that it would be right and proper for us, as a farming organisation, to try to stand in the way of the public having the sort of enjoyment that is necessary in a country like this. We feel that for the Minister to take his decision on the merits of the case might be better—this is going back, I admit on what I said earlier when I was just thinking aloud on your suggestion—than having a classification laid down. One can quite envisage that if, say, parts of Cheshire came within a classification which allowed the promoters of a scheme to provide for only a very restricted public access such a pressure of public opinion would be aroused that the Minister in the end would not approve the improvement scheme at all so great would be the political element; whereas if the Minister's authority were sufficiently flexible to give the public more access than he would find it possible to do under a definition laid down in advance, the scheme might be able to go through on a reasonable basis. I am speaking now in very broad terms, but I do feel that flexibility might be an advantage, even from the point of view of agricultural improvement. But I am not definite about this, and can see the merit of both views.—*Mr. Phillips*: What Mr. Woolley has just said links up with the administrative procedure which we have suggested in our memorandum—the idea that there should be draft schemes,

with publication and advertisement, provision for objections and a public enquiry, ministerial responsibility to Parliament, and some negative or affirmative resolution procedure to get the seal of Parliamentary approval to a scheme. That allows for flexibility and would ensure the ventilation of every point of view.

2570. *Sir George Pepler*: Is that not rather inconsistent with your suggestion of building up case law?—No. As the Minister gained experience in the treatment of schemes, it might well appear to him that certain common features—almost like model clauses in private bill legislation—were beginning to emerge.

2571. *Chairman*: Are many of your members themselves commoners?—*Mr. Woolley*: Yes.

2572. Are any of them satisfied with the situation as it exists?—No doubt some of them are, but the general view of our commoner members is very firmly that the whole problem needs to be tidied up, and that there ought to be legislation to enable commons to become more productive agriculturally. That view is very strongly held. Indeed, as you probably know, the N.F.U. asked for the establishment of a Royal Commission for a considerable time before it was in fact set up, and that request was prompted by the views of our members who had an interest.

2573. Would not improvement schemes apply to a small minority of commons only?—That is rather hard to answer. There would undoubtedly be some commons where it would not be an economic proposition to embark upon a scheme; but I think that the Hill Farming and Livestock Rearing legislation gives a precedent. Under this legislation the Government have for a good many years been putting much emphasis on the improvement of a great deal of land that comes into a similar sort of category to much common land. Of course, the extent to which it is a sound proposition to put capital into an improvement scheme depends tremendously upon the agricultural circumstances at the time. Obviously if agriculture continues to be an important element in Government consideration then, of course, improvement is much more worth while. Certainly the Government have given a lot

of attention to this type of land through Hill Farming and Livestock Rearing legislation, particularly from the meat producing aspect.

2574. But may this attention be merely temporary? If a depression came in the agricultural industry would there be the demand for the increased use of the land any longer?—I think that the Minister of Agriculture's statement to Parliament yesterday showed that although the wind had appeared to be blowing from a cold quarter lately, the Government have realised that food production in this country continues to be of vital importance. I think we must work on that assumption as being the only sound one. If we did not believe that, then, of course, there would not be much point in putting forward any improvement measures. But it is upon that assumption that we work; and I think it is Government assumption, and, despite all the criticism that we hear, the general national outlook also. The degree of support and the ways and means by which it is given may be open to question but I think the underlying assumption is that agriculture must make a big contribution to the country's economy.

2575. Do you contemplate that the schemes would involve, in some cases, the permanent inclosure of what is at the moment open land, accessible to the public?—Yes. I do not think we can envisage to what extent that is going to be necessary, but in certain cases I do not think the quite intensive agricultural production of which the land is capable is possible without inclosure. But by inclosure we are not thinking of shutting out any public access; we think that it may and would have to be controlled for the purpose of intensive agriculture but not necessarily excluded.

2576. Are you asking for inclosure of only comparatively small parcels of land? Or do you suggest that all the commons in the country should be inclosed?—Not the latter.—*Mr. Phillips*: May I make it clear that, having regard to the claims of other persons interested, among other things, in the economics of the situation, the N.F.U. are not advocating a general policy of inclosure of common land.

2577. *Professor Stamp*: Purely from the point of view of agriculture, ignoring any consideration of public access, is there any advantage agriculturally in the maintenance of common land as such, as against its inclosure and division into severalty?—*Mr. Woolley*: From a purely agricultural standpoint, I should think that undoubtedly the land could be better farmed if it were inclosed—if it became separately farmed plots of land. I think that that is true generally, though, of course, there are the mountain commons where I think the expense involved in inclosure certainly would not justify the end result. With those vast areas of land of low production the only practical thing to do is to really ranch them, as is done under the present system.

2578. But cannot the ranch system of farming be carried out on land that is privately owned? Is there any necessity to link hill common land with ranching?—I agree it is not necessary except that I think that the greater part of the people who farm the hill land would find it difficult individually to provide the capital to stock a large area adequately. But by a communal system the land is stocked because each individual provides a part of the whole. The people who can ranch on their own are in a minority and I think, taking the country as a whole, the present system must remain.

2579. *Mr. Floyd*: Supposing all the advantages of the present hill farming subsidies were applied to common land, would it in fact be possible to take advantage of them without creating new buildings, roads and so on—in other words, without increasing the population needed to maintain the land at its higher standard of cultivation?—I should have thought so generally, because most common land in the hill areas is associated with existing buildings. I think the great need is that it should be able to take advantage of fertiliser grants, drainage schemes, and the like.

2580. But could advantage be taken of those grants without increasing the living accommodation? Supposing one could apply all the relative subsidies—liming subsidies, hill cow grants and all the others—to hill common land, would the community in those areas in fact be able to farm the land at the higher standard without the provision of large

capital sums for new buildings, new water supplies, new fences and so on?

—Fencing, of course, is important, but I think that the broad answer to your question is yes. There is a tendency for people in some of these hill areas to farm them from a distance rather more now than they used to do. Many farm them from another farm, perhaps some miles away in the lowlands. They have a shepherd up the hill, and they use Land Rovers a great deal. That is one way in which the social problem of getting the right sort of people to live on the hill in those districts is being solved.

2581. *Professor Stamp*: Would you agree, that certain common land which was productive, particularly of crops, during the war has since been abandoned simply because of the absence of farm buildings and water supplies, which could not be provided on common land? Is it not the absence of capital equipment which has caused this land to go back?—In some cases that is so. I was asked whether I felt that improvements could be brought about on common land without extensive building, and introducing population there. My broad answer to that is yes. One is, however, up against a social problem in trying to populate many of the hill districts, because the wives, particularly, will not live in them. The problem is being solved to a certain extent in other ways.

2582. *Professor Alun Roberts*: Would you agree that if it were permitted to take steps to intensify the fertility of hill commons to enable them to carry more winter stock then, without costs being incurred at all in the provision of wintering accommodation or housing, relief would be given to the very severe problem in the foothill districts of the wintering of hoggets, for which it is now so difficult to get accommodation because of the pressure of dairy farming in spring? Could some easing of the present tension be provided in this way? Would not the greater use of fertiliser on the commons provide an improvement without incurring capital expenditure?—Yes, I think that the increased use of fertiliser is probably the biggest single feature from the agricultural point of view. I am sure that there could be a much longer grazing season and many more sheep particularly could be carried on the hills if through the winter period,

when the pressure really comes, fertility was improved.

2583. *Mr. Arnold-Baker*: There are two points on paragraph 5. First, has the National Farmers' Union considered the use of commons for forestry?—*Mr. Phillips*: We do, I think, refer to it in paragraph 15. Forestry, of course, is not really the province of the Farmers' Union, but we recognise that, particularly with the very great and diverse claims that are made upon agricultural land, one of which is for forestry, there may be cases in which common land which is not productive now might appropriately be devoted to afforestation, if only to relieve the pressure of that claim, among others, upon good agricultural land.

2584. One also sometimes hears of complaints that good agricultural land is taken for building. Is your view on the use of common land for building similar to the one you have just expressed about forestry?—Yes. Paragraph 16 is quite categorical in that respect.—*Mr. Woolley*: We feel quite strongly that in the national interest of the best use of land there should be no privilege, as it were, given to any particular type of land.

2585. *Chairman*: In paragraph 6, you suggest that a scheme should be promoted by a majority of the persons having an interest in a common. I have two questions on that. First, where does the lord of the manor come in?—*Mr. Phillips*: He is one of the persons having an interest in the common.

2586. Secondly, would you determine the majority by number or by value?—We have not attempted to work out in detail the exact method that should be employed. We believe as I said earlier, that all interests, the people having common rights, the lord of the manor, the public, and so on, should all have their views taken into account. Ultimately the Minister responsible to Parliament must decide what is the majority view and what should best be done with the common from the national point of view. It is difficult to compare the weight and value of the lord of the manor's interest with that of the commoners.—*Mr. Woolley*: There is the precedent of producer organisations, such as marketing

boards; there voting power is always weighted to the interest that producers have; for instance, the Milk Marketing Board, I think, allows for each registered producer one vote for every ten cows or part of ten cows thereafter. There is a similar sort of arrangement for the Potato Marketing Board, only on an acreage basis. I think that probably the only practical way of determining the majority would be for voting to be according to the same sort of interest weighting although this is not a point we have gone into.

2587. How does the lordship of the manor compare with, say, a common of turbary?—*Mr. Phillips*: The proprietary interest of the lord of the manor, I would submit, cannot be regarded as being very substantial in modern times. It has a certain honorary and antiquarian value and interest, as we know, but in many cases of common land, particularly in Wales where we have sought to investigate the ownership of the proprietary interest, it has become very difficult to find who is the lord of the manor. If there were a substantial economic interest involved in the ownership of the lordship of the manor, then one would have expected that it would have been less difficult to find the lord.

2588. *Professor Alun Roberts*: Do you not think that it is the decline of the powers of the lord of the manor that has led to that position and that we should not underrate the value of the lordship where its functions are still exercised?—This is a general problem. It is rather like the disparities caused by the break-up of the old estates and the general parental control that was exercised by them over farming. I appreciate how difficult it is to assess the value of the lordship of the manor, and I think it would have to be done *ad hoc*, having regard to the actual rights that were exercised. But, by and large, I would not have weighted the value of the lordship of the manor very heavily.

2589. *Sir George Pepler*: Would mineral rights be included in the valuation?—In so far as they retained any value, yes. Having discounted coal, petroleum, gold and silver, and now uranium, there is not much left for the lord of the manor below the surface. Gravel, certainly, and china clay are still of value to him.

2590. *Mr. Floyd*: I believe the question of weighting votes is something which could cause more controversy than anything else. On many lowland commons rights are often exercised by one or two or three large farmers and there may be quite a number of small people with very limited rights. Is it your view that, from the point of view of food production, those one or two people should be virtually in control of the common? From the point of view of getting any commoners' committee to work by agreement would not weighted voting cause tremendous discussion and hard feeling? It is a question of great difficulty, and any proposals which the National Farmers' Union can suggest based on the practice of the Potato Marketing Board or the Milk Marketing Board would be of very great value.—*Mr. Woolley*: I appreciate the importance of this point and I am sorry to confess it is not one that we have discussed. We have a committee of practical commoners, but we have not discussed it with them. Before giving you any authoritative N.F.U. view therefore I would like this committee's advice. I have given you only an off-the-cuff reaction and I may be expressing a view that is not acceptable to people who have more knowledge of it than I have. But on the precedent of other producer-sponsored and organised bodies, an element of weighting must enter into the voting. It is a little difficult to see how a few people with a minor interest could be allowed to obstruct some desirable improvement which, if voting were on an interest basis, would go forward. I appreciate that there are difficulties of a psychological sort in giving the greater share of power to a minority of persons with a majority interest.

2591. *Professor Stamp*: Where commons are stinted or gated, would stints be a satisfactory basis for weighting?—I had been thinking of weighting on those lines.

2592. *Mr. Evans*: Are you thinking now only about that part of a scheme which might affect the agricultural management?—Yes.

2593. *Chairman*: Would you like to put in a supplementary note on this point after you have consulted your committee? We should be grateful if you

would.—Yes. I would not like to express an official N.F.U. view without having consulted the people who advise us.*

2594. *Dr. Hoskins*: Are the commoner members of the N.F.U. by and large, big commoners? Do you include any small commoners, or would you hear the view only of the big man?—I think our committee constitutes a fair sample of all, insofar as it is possible to get the small men to come up to London and take part in committees of this sort. But in any case the members of the committee are all people who would give a very fair and balanced view and not one weighted simply by their own experience or interests. There need be no worry on that score!

2595. *Professor Stamp*: In paragraph 7 you say: 'The Union also feel that the same facilities, rights and duties which apply in the case of land owned and occupied severally should be made equally applicable to such common land . . .'. To whom would such payments be made? Would that not have to be a legal body of commoners before it could be done?—*Mr. Phillips*: Yes. The Hill Farming and Livestock Rearing legislation already contemplates the making of grants in respect of common land. In practice, the provision has proved to be pretty well a non-starter because of the difficulty: that there must be some sort of legal entity, some corporate body. We think that the commoners' committee should constitute the executive body for this purpose, particularly after yesterday's announcement by the Minister of Agriculture concerning other forms of

capital grant that do not involve a comprehensive scheme as does the Hill Farming and Livestock Rearing Act. We do not think that there would be any great difficulty in giving the requisite degree of executive power to the commoners' committee, so that they constitute the legal entity for this purpose.

2596. *Chairman*: Is the commoners' committee to act for one common only, or may it act for a number of commons?—We contemplate that each common would have its own committee and that if the same persons constituted a committee for one or more commons it would be purely coincidental by reason of coincidence of interest.—*Mr. Woolley*: It might prove, in practice, that a committee could, with advantage, operate over more than one common. We had been thinking only in terms of committees for individual commons, but there could be cases where commons would be better combined.

2597. Are there not existing instances of one committee for several commons receiving subsidies?—*Mr. Phillips*: Yes.

2598. *Professor Stamp*: I have seen from a schedule of certain commons by the Cheshire County Council that the majority of them are less than 10 acres in extent. Would you want to set up separate commoners' committees for commons with areas ranging, say, from 7·6 to 0·6 acres?—I think our general proposition has been that the problem should be dealt with in series as it were. There must be some commons more urgently in need of a management scheme than others, and it may well be that no scheme would ever be established for the 0·6 acre common because it would not be practical or economic. But there must be others needing treatment much more quickly.

2599. There is only one common in the schedule I am referring to over 60 acres. What sort of organisation do you contemplate for a county like Cheshire, which may be quite typical of lowland ones with perhaps three or four commons of 30-40 acres but the rest in little pieces?—*Mr. Woolley*: I certainly do not think that one could contemplate setting up committees within the concept that we have advanced for the small fragments. It might be possible to embrace them within an area of worthwhile size. We were thinking more of the

* The following extract is taken from a letter of 20th December, 1956, from the Assistant General Secretary of the National Farmers' Union to the Secretary of the Royal Commission:—

'We have given a little further thought to this point, as we promised when before the Commission, but we have come to the conclusion that we cannot, and perhaps should not attempt to, provide an answer on the question of the relative weight of the interests. We would say, however, as we tentatively suggested when giving evidence, that as between the commoners themselves, where the common is stinted, we think that representation and voting power should be on the basis of the headage of stock which the commoner is entitled to graze on the common.'

larger commons in the first stage and I think we would want to work our way through to the smaller pieces where obviously the prospects of doing very much are limited by their size.

2600. *Mr. Arnold-Baker*: Would it depend on how close together the various patches were?—Yes, it would indeed. I think that that would be the fundamental factor.

2601. *Mr. Floyd*: Regarding the financing of schemes on common land, presumably no grants would be for 100 per cent. of the cost. Would the balance to be found by the commoners' committee be advanced by loan and recovered from year to year by a levy on the stinholders over the period for which the improvement lasted? I ask that because I think there may be some very practical difficulties when dealing with questions of tenant right and so on. A farmer might have a stint on a common and be unwilling to subscribe to a long-term improvement because he was shortly leaving the farm which carried the stint. Have the Farmers' Union thought of any system by which the initial part of the cost of an improvement, other than the grant, might be advanced by some corporation and recovered from the commoners over a number of years, or do you envisage that the commoners will have to put their hands in their pockets straight away, before the work is carried out?—*Mr. Phillips*: There are these difficulties, of course, but they are the same sort of difficulties, though perhaps accentuated in the case of common land, that one meets with in the ordinary case of improvement of agricultural land. First one has to decide whether it is a tenant's or a landlord's type improvement, whether the rights of common of pasture are being exercised by an owner-occupier in his capacity as owner or as occupier; and to determine the apportionment of liability for contributing to the cost of any capital improvement. All these things, I think, can be fitted into the existing structure of the Agricultural (Holdings) Act, 1948—that is to say, claims to compensation for improvements, claims for tenant right compensation, and so on. To take the simplest case, for an owner-occupier I should have thought that the financial arrangements would have been made in the way you outlined by means of an

advance and recovery over a period of years. After all that is what is often done now in the case of improvements on privately-owned owner-occupier land.

2602. Would legislation be necessary to enable holding bodies to make these advances?—That is one of the general problems of agriculture. I would not think that it was peculiar to common land.

2603. *Chairman*: I am afraid I do not understand the words in the last sentence of paragraph 8: 'legislative and administrative rather than judicial'?—We really mean that the device to be employed when defining the rights and duties of persons interested in a common is, as I have mentioned already, that of the drawing up of a draft scheme, its publication and advertisement, with a provision for objections, and public enquiry; and with the Minister taking the final decision in the course of his exercise of executive power, subject to Parliamentary approval. We put forward this method rather than invoke the House of Lords for a precise definition of each person's interest.

2604. But have you not, first of all, to find out what each person's interest is—who are the owners who are entitled to produce a scheme in the first instance? How are you going to do that?—We do not suggest that there should be a national register. We suggest instead that in the examination of each common steps should be taken to ascertain who the persons interested are. I admit that we have not attempted to spell out the method by which that should be done. Mr. Woolley and I were discussing this problem only this morning and came to the very tentative conclusion—it is only a personal view—that it would be worth considering whether the Agricultural Land Tribunals might be used to ascertain the rights of the people concerned. Under Section 21, of the Agricultural Act, 1947, Agricultural Land Tribunals are given the task, on application, of deciding who is the owner of agricultural land for the purposes of Part II of the Agriculture Act—that is to say, for purposes of determining who is the right person upon whom to serve directions, etc., as respects estate management. In view of the constitution of an Agricultural Land Tribunal—the fact that the chairman is a lawyer of standing appointed

by the Lord Chancellor, that it is also an agricultural body representative of owners and occupiers of agricultural land, and that it is speedy and cheap—we have thought it worth considering whether the task should be given to it of ascertaining, in the first instance, who are the persons interested in a given common.

2605. But these interests may very well be of very small value. In one county—Cheshire, to which Dr. Stamp has referred there would probably be thousands of persons who had claims of some kind, very often very small ones. Is the Agricultural Land Tribunal a suitable body for dealing with those very small claims?—It is more suitable than the High Court.—*Mr. Woolley*: We were thinking more of a localised procedure for the preparation of a register, which we felt should be prepared when an improvement scheme was mooted. The improvement schemes should come in series, those already ripe and appropriate being set in motion—and, providing impetus by example, for the promotion of others. The people who had rights would have to be ascertained and at some fixed date the books should be closed, as it were, so as to constitute the register of commoners for that particular common. Mr. Phillips was talking more of representations by people whose claims were not accepted at the local level. The preparation of the register for some commons might be fairly straightforward, for others very difficult and complicated. Cases of appeal, as it were, should go in the first instance to the Agricultural Land Tribunal, who should possibly be the body to recommend the register to the Minister as constituting the list of right-holders for a particular common. There might also be the safeguard that, as an Agricultural Land Tribunal may not be the ideal body constitutionally for settling points of law, there should be a right of appeal from it on such points as there is now in ordinary agricultural cases. We feel that some sort of machinery that is not too complicated and makes use of local knowledge might be used to secure an expeditious settlement.

2606. Who is to prepare the register?—*Mr. Phillips*: We say in the opening words of paragraph 9 of our memorandum that 'power might be given to the Minister, either upon application or of

his own motion, to nominate persons and/or bodies to promote a scheme for a particular common, and in default to promote the scheme himself'. The answer therefore must be that the persons nominated for the purpose must be initially responsible for the preparation of the register.

2607. *Professor Stamp*: When you said just now that you did not want a national register, I took it to mean that you wanted the register compiled on a county basis. Is that your view or do you suggest that there has to be a separate register for each scheme?—If I gave the impression that I thought registration should be on a county basis, it was a mistake. I have always taken the view that each scheme must be on a 'common' basis.

2608. *Mr. Lubbock*: Do you envisage that legislation should make registration permissive and that no all-embracing register would be called for—that registers in fact be drawn up for individual commons as the initiative for the promotion of a scheme arose, whether from the immediate interests or from the Minister?—Yes.

2609. So that if nothing was initiated for the little commons they would go on as they are?—Exactly. If there were nobody—whether the agricultural executive committee, the Minister, or a person interested in the common—who felt that something ought to be done about a common, nothing would be done.

2610. And it would not require any register?—No.

2611. *Professor Stamp*: Following that up, there are many commons in the country where the lord of the manor cannot be traced, where the commoners are not known, and where apparently there is no one still in existence with any legal interest in the common. Does the N.F.U. not look askance at vast areas of the country being completely neglected for those reasons?—Of course we do, and that is why we have proposed that in such a case the Minister could of his own motion promote a scheme. We would conceive it to be our duty as representative generally of agriculture in the area concerned to bring pressure to bear upon the Minister to exercise his powers—but not necessarily for 0·6 of an acre such as the common mentioned in Cheshire!

2612. *Chairman*: Suppose somebody is appointed by the Minister to compile a scheme. He has to have an office, to advertise, and so on. Who is to provide the money for this?—*Mr. Woolley*: I think the offices already exist for the most part. There is the existing staff of the Ministry, who may possibly be able in most cases in combination with the local commoners' committee to do the work necessary to compile a register. They would act under the Minister's authority either as his appointees or as his staff. Professor Stamp envisaged the stage where some commons had their improvement schemes and registers in this way, leaving all sorts of bits and pieces over the whole country, some of them larger and some smaller, where nothing was done, implying that that element of the commons problem would still run wild, as it were, with no register of people holding rights over them. We had rather thought that the practical approach was to break the back of the problem, or at least making a real impact on it by getting schemes introduced where they were worthwhile. From that point—and it might be some years before the whole thing could be straightened out—the process might continue along the line until a list is made of all commons. What Mr. Phillips was saying was within our concept of a practical approach towards the improvement of commons through commons management committees, but we do not preclude the tidying up of the whole problem in the way I have just outlined.

2613. *Professor Stamp*: But the little commons, whatever your opinion of them, are probably the ones which are of the greatest interest to the public at large from the point of view of recreation, and so on; and that leads me to ask whether where the handling of commons is concerned the N.F.U., like the Ministry of Agriculture, is suspect as having a sectional interest. Should it play a part or would it not be better to have a completely new authority, and cut out the Agricultural Land Service, the Agricultural Land Tribunal, and have instead Commissioners of Common Land looking at the problem from all viewpoints?—*Mr. Phillips*: Under existing legislation, as we know, the Minister of Agriculture at present has certain duties and obligations

on behalf of the public as respects common land, and presumably he has exercised those powers and duties faithfully in the interests of the public ever since they have existed. We have not sought to make any positive proposition concerning a general Commons Commission. We have mentioned at one stage in the paper the Agricultural Land Commission when referring to the idea that there should be a national body, but our general concept is that there must be a Minister of the Crown responsible, and that any other body as exists should be of a consultative and advisory character to the Minister. We do not stipulate either that the Agricultural Land Commission is the right body for that purpose, in view of their existing advisory duties to the Minister of Agriculture under the Agriculture Act, 1947, or that it should be another body nationally representative of the interests involved, but still of a consultative and advisory character.

2614. Is there any objection to the Minister of Housing and Local Government who is charged officially with maintaining the balance of land use coming into the picture?—*Mr. Woolley*: This problem is really agricultural for the most part, and therefore we feel quite firmly that the Minister of Agriculture is the right Minister to have responsibility. At the same time there is the concept that the Government is one and indivisible; the Minister happens to be the Minister for Agriculture, but he is also a Minister of the Crown. I think that that really covers the possibility of any charge of partiality—he is also Minister of Food and Fisheries and Forestry at the present time, which gives him a very wide range! The real object should be to place the responsibility where most of it lies, and if the main aim of the procedure is agricultural, then we would say that the Minister of Agriculture is the appropriate Minister. And as for the N.F.U.—well, of course, we have no formal part in this. We are only a fitting shadow on the stage, as it were.

2615. *Chairman*: But do you not come in on finance, because there are only three ways of raising money, taxation, rates and thirdly from the commoners? The N.F.U. surely come in as commoners?—But commoners may or may not be members of the N.F.U.

2616. *Sir George Pepler*: In paragraph 8 you refer to proper weight being given to all interests. In that paragraph you are considering interests in the land as agricultural land. Then in paragraph 16 you refer to quite other uses of land—for building houses or even factories—and there is also the element of recreation. These uses are the concern of the Minister responsible for town and country planning. I can see the point of giving jurisdiction to the Minister of Agriculture where a scheme is for improved agricultural use. Where the other things come in would not the Minister responsible for the right use of land be involved?—*Mr. Phillips*: What we are really saying in paragraph 16 is that there should be no isolation or special privilege of exclusion granted to common land. It ought not to be much more difficult to use common land for development—if that were the right word to use—than it is to use the adjacent well-farmed, privately owned, inclosed agricultural land. We suggest in paragraph 16 how a scheme for development might be dealt with within our general framework. We are merely suggesting that common land shall cease to be in a position of privilege in that respect.

2617. But would not the Minister responsible for planning be the man to decide which was the right use of the land?—If legislation removed the privilege of exclusion then, in just the same way as now, the appropriate public authority—be it the Ministry of Housing and Local Government or if it is housing the local housing authority, or whatever other public authority is appropriate—would proceed with steps for compulsory purchase in the event of a decision being taken to develop common land.—*Mr. Woolley*: Yes. The Minister of Housing and Local Government would have the same interest and authority when it came to non-agricultural development and acquisition as he has for any other land.

2618. *Chairman*: Your suggestion is that office staff should be provided by the local Ministry of Agriculture office. But there will still be expenditure in relation to advertisement, and so on; and the compilation of the register itself will be a fairly expensive process because it will take a good deal of time and energy. Who is to provide the funds?—We would say that that was part and parcel

of the legislation, that the legislation involved that expense and that therefore it should quite frankly be a charge on government funds. But in addition to that the N.F.U. probably would be able to give considerable help through our county secretaries, and so forth; but I do not think it would be fair to put the burden upon the N.F.U. directly.

2619. Perhaps I misled you by referring to the N.F.U. I meant that the expenses could be met by a levy upon those who were registered as commoners.—"Yes, though I would put it the other way round—that if legislation involved this process the cost involved should be a government charge in the first instance.

2620. *Mr. Arnold-Baker*: It seems that before a scheme can be finalised it may be necessary to decide a number of points which are purely legal; for instance, who the owners are, what the extent of the common is, and also possibly the nature of the common rights themselves. They would presumably have to be decided by some judicial tribunal. Have you considered whether the County Court would be an appropriate body to settle those problems, since the County Court would be a good deal cheaper than the High Court and also more local?—*Mr. Phillips*: That would be one method. As we said earlier, we have only today come to the rather tentative conclusion that the Agricultural Land Tribunal might be the appropriate body. After all the Chairman of an Agricultural Land Tribunal has the same qualifications as a County Court Judge. Findings of fact are binding in the same way as with County Courts. An appeal lies from the Tribunal on a point of law, exactly the same as in the County Court. The advantages of the Tribunal are probably expedition, cheapness, even as compared with the County Court, and its special agricultural knowledge.

2621. *Chairman*: I think we have already covered paragraph 9.—*Mr. Woolley*: May I mention at this point that we feel it would be a good thing in order to maintain liaison that a member of the agricultural executive committee should be co-opted on to the commons management committee, not as a person having voting rights but rather as one who conveyed information and kept a two-way contact.

2622. Would you also provide for the representation of the public?—The representation of the public would, I think, depend upon its interest in particular cases. Certainly they would be entitled to representation in certain cases.

2623. In the case of a common which was very attractive and which was used for recreational purposes, would you have representation of the public?—*Mr. Phillips*: Yes. We say in paragraph 14 'In such a case provision would no doubt have to be made for the representation of the public interest through the medium of the appropriate local authority or otherwise. . . .'

2624. That is in a case where the public has a legal right of access. What about those rural commons, where there is no legal right of access?—We would certainly allow for representation where there is, as *Mr. Woolley* said earlier: 'a properly established right of access by the public'. Our predominant interest is agriculture. We would not wish to exclude reasonable and proper public rights of access, but those rights would have to be based on something more than the mere fact that it was a common.

2625. *Sir George Pepler*: Do you consider that a body to represent such a public interest might be the Commons, Open Spaces and Footpaths Preservation Society or the Council for the Preservation of Rural England?—I do not think that it would be proper for the N.F.U. to decide or even to voice an opinion on who the true representatives of the public would be in such a case. We have friendly and understanding relations with the Commons Preservation Society, whom we have met from time to time, and that is why we have said 'the local authority or otherwise'. It is an open question which it is not for us to answer.

2626. *Chairman*: I think we have dealt incidentally with paragraphs 10 and 11. Is your suggestion in both instances that inclosure in the technical sense may in fact be desirable in special cases?—Yes.

2627. And that other modifications of rights together with inclosure may also be desirable?—Yes.

2628. *Sir George Pepler*: But can you reconcile what you said earlier about not advocating a general policy of inclosure

with what you say in paragraph 11: 'The power to formulate and submit schemes for the proper regulation of common land should include power to submit a scheme for the partition of the land among the persons interested, so that thereafter the land would be held in separate parcels by the former commoners and others'?—We do not advocate a general policy of inclosure, but we do say that the Minister should not deny himself, in framing any legislation, the opportunity to deal with a specific case by partition, if that were the right solution for that case.

2629. *Chairman*: I am not quite certain what is meant by the second half of paragraph 15:

'Where it can be shown that it is impracticable to expect that productive use will be made of the land in the absence of the exercise of statutory powers, the Minister might be empowered to acquire the unincumbered freehold interest in the land, with a view to the disposal thereof for productive purposes—normally agriculture, but possibly also, in appropriate cases, for afforestation.'

If the land can be used for productive purposes, then how can it be impracticable to expect that productive use will be made of it?—Could we take by way of illustration the acreage of alleged common land which was requisitioned during wartime and devoted to productive use? Let us suppose that one such common has been derequisitioned and become derelict again—gone back to scrub. Potentially it is productive and valuable, but nobody displays the slightest interest in it, and nobody can be persuaded by the Minister to promote a scheme for its improvement. We say that in a case like this it is proper to consider whether the Minister of Agriculture should acquire the land to ensure that it is used productively, in agriculture normally, or possibly for afforestation. The way in which that could happen under existing legislation is that the common would be handed over to the Agricultural Land Commission for management and lease as 'inclosed' land to a tenant farmer. That is what we are thinking of here. It may be a rare and remote case. Normally one would expect—and this, I think, is what you had in mind—that if land is capable of productive use someone would use it productively.

2630. That is what I would have thought. Surely the commoners would seek to make a profit on it?—One would expect that, but I think there may be cases where through the mists of time the ownership of the common rights, and indeed even the proprietary interests in the common have become obscured and lost. Where that state of affairs exists, the Minister ought to act.

2631. *Professor Stamp*: In that connection we have had some evidence that land which is potentially quite useful is not in fact used for grazing because it is unfenced. Because of the danger of animals being killed by traffic and the danger of sheep worrying by dogs the land is lying idle and derelict. Have you any evidence of that?—There is a certain amount of evidence of that sort of thing. It was considerations of that kind amongst others that prompted the N.F.U. to press for the establishment of the Royal Commission and for the introduction of legislation to modernise the law about common land, to make it possible to fence and improve the land and to provide cattle grids and so on. In short, I do not suppose there will be many cases in which action under paragraph 15 would be necessary because the reasons why land potentially productive is not in full use at the moment are those you have mentioned. The proposals in our memorandum would provide the necessary remedies.

2632. *Professor Alun Roberts*: What about the case where good common pasture land is left temporarily unused because of the withdrawal of stock while individual stockowners are grading up to attestation? When, as we hope, the whole country will finally be attested—even though that may be some way off—do you think that better use will again be made of common land? The partial restriction in its use due to the upgrading of attested stock will then no longer be necessary?—We have had cases brought to our knowledge in which commons have been understocked simply because of the necessity of segregating attested from other stock, and I believe that with the spread of attestation there may be an impetus to the greater use of commons. There may be cases where there is temporary under-use of commons on account of upgrading towards attestation.

2633. Would you say we must not be unduly depressed because of the lack of

use now made of some commons? It reflects a temporary withdrawal only. Would we be right in refusing to take it as a picture of a general drift which will continue in the future, since once attestation is completed we may find that full use is made of the commons once again?—*Mr. Woolley*: I am sure that is a farming problem which cannot be avoided where there is a mixture of attested and unattested stock. I do not think there is very much that can be done about it in this intermediate stage. We are moving forward pretty rapidly to the point where the whole of the country will become attested. Sixty per cent. of the dairy herds, at any rate, of the country—and I think perhaps sixty per cent. of the whole of the cattle—are attested now, and attestation will gather impetus as the Ministry declare more eradication areas. So I think this problem is a temporary one and we ought not to allow it to affect our view as to the use of commons too much.

2634. *Chairman*: We have already referred to paragraph 16. I wonder if you could give examples of the difficulty of acquiring common land for housing purposes?—*Mr. Phillips*: There have been concrete cases. It is a little bit difficult to quote them at random and without reference, but I remember within the last twelve months a case coming up to N.F.U. headquarters from Berkshire, in which the local authority with the best will in the world, were very anxious to secure approval for housing developments on common land, and with the full backing, of course, of the farming community in that area; but they were forced back because of the difficulties which lay in their path. I can remember another case a little while ago in Norfolk in which land belonging to one of our members was actually taken by compulsory purchase for housing development when it abutted on to common land which was much less good and, according to our members in the area, practically unused. Once again the local authority were not able and willing to pursue any proposals for development on that common land because of the legal difficulties. Those are two concrete cases, and over the years there have been others.

2635. What are the particular legal difficulties which obstruct authorities?—I must confess at once that I am not

an expert in these matters, but I think the commission will already have had evidence about the difficulties of providing equivalent land in exchange, or of going through special parliamentary procedure where compulsory purchase of common land is pushed forward, which is—or can be—as difficult and expensive as Private Bill legislation. I should have thought there is no doubt that there are considerable difficulties. We have accepted, broadly speaking, assurances by public authorities desiring to develop common land that the legal difficulties confronting them are formidable.

2636. *Professor Stamp*: Are there any specific cases of which the Union have details?—The only very recent one is the one in Berkshire, Kingwood Common is the name I think.

2637. *Mr. Floyd*: It has been put to us that the difficulty of acquiring common land may well have been to the advantage of the country as a whole, taking a very long term view. It is only about two per cent. of the total land area. However clever the planners are today it is very difficult to see very far into the future, and it is said it may be a good thing to have a small reserve of uncommitted land. Would the N.F.U. like common land to be equally as available in all respects as any other type of land for acquisition for all purposes?

—*Mr. Woolley*: Yes, we think that to make such a precise exception as is done for common land, is a bad thing. We think that proposals for acquisition, including the choice of the land to be acquired, should be determined on their merits having regard to all the factors in the situation, of which of course the need for public recreation, and so forth, would be one. We are not pressing that common land should always be taken. We are only saying it should come into

the reckoning along with other land and be assessed by the same factors that now apply to other land.

2638. And do you think it necessary to supply a similar area of common land elsewhere to replace that taken?—No. We think that where that necessity was obvious, the common land should not be taken. We would certainly not think it should be an automatic rule that a similar area should be supplied in substitution if common land were used.

2639. *Chairman*: Do you think that adequate representation of the interest of the public in common land could be effected by the normal scheme of public enquiry?—Yes.

2640. *Professor Stamp*: We find that some urban commons and small village greens, which are of paramount interest for public access, are frequently not grazed and consequently have become overgrown with brambles and thickets. They are expensive to keep cleared: The proper way to do so, of course, is to have them grazed by animals. Is there any fundamental objection from the point of view of farming practice to the system of tethering animals on these commons?—No. I think the only practical way of grazing would be to tether. I do not think there is anything at the present time that prevents people with common rights from tethering. I do not know how farming people themselves feel about the practice. The French do it a great deal, but of course the French peasantry is something of which we have not quite the equivalent in this country. But I think there would be a great deal of merit in tethering if people chose to do it. Why they do not I could not say.

Chairman: May I thank the N.F.U. for such an interesting discussion and for their interesting suggestions? It has been very helpful to us.—Thank you for giving us the opportunity.

(The witnesses withdrew)

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MINUTES OF EVIDENCE

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Wednesday, 28th November, 1956

WITNESS

National Union of Agricultural Workers



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WEDNESDAY, 28th NOVEMBER, 1956

MR. W. C. H. LUCKETT, J.P.

Executive Committee Member

MR. A. HOLNESS, M.B.E.

Late Editor of the Union's Journal "The Land Worker"

MR. D. F. HODSDON

A National Officer

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1.

Wednesday, 28th November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
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DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

SIR GEORGE PEPLER, C.B., P.P.T.P.I.,
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PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence submitted by the National Union of Agricultural Workers

1. In this memorandum we are mainly concerned with commons which are said to be an agricultural problem, and to a lesser degree with Metropolitan and urban commons, which are purely recreational and have a greater degree of protection.

2. Decisions about the best use to which common land might be put can be based only on a complete survey and the evidence and information which will be collated by the Commission.

3. The legal status of many commons is in doubt and where it can be ascertained is often found to be exceedingly complex. It appears that a common may be anything from a little strip of rough pasture running between two hedges to a big area of high moorland where only sheep can crop a living. Commons are of such infinite variety in size and quality of soil or pasturage and are held under such a variety of conditions, that almost each common presents a different problem and each common must be treated on its merits.

4. Not only is a clarification of the legal position necessary but before there could be safely indicated the best use which might be made of a particular piece of common land much relevant information about the geographical position, the altitude, the slope, the soil texture, etc. must be available.

5. In view of the complexity of the subject, and our lack of detailed information, we do not feel competent to do more than indicate the general principles on which, in our opinion, the use of common land should be based.

6. During the war the threat to the importation of food by enemy action led to the requisitioning of large areas of uncultivated or undercultivated land. These areas included many commons, which were willingly handed over under the solemn promise of restoration and return at the end of the war—a promise in some cases

still unfulfilled. Good crops were grown on some common land, and this has led to a demand in some quarters that the land should be retained for tillage and other common land brought under cultivation. Suggestions have been made that urgent national needs can be advanced as the justification for new legislation that would deprive the commoners and the public of their rights.

7. On numerous occasions we have expressed our agreement with the general principle that food should be produced to the utmost capacity of our land. We are as a nation in no position to ignore any possible source of an increase in the supply of home-grown food. But we think it is possible for people who are obviously biased towards the point of view of cultivation to exaggerate the importance of the contribution our common land could make to food supplies. There is, as was proved during the war, some very good land in the commons, but most of it is naturally of such low productivity that the cost of giving it a very limited value as tillage would be, from the point of view of an already heavily taxed community, too high to be economically justifiable.

8. It is often true that behind the historical accident there is a natural physical factor, and it may be argued that during 'the century of enclosures' common land remained so because of the low productivity of the soil which rendered it not worth while to enclose. This would appear to be the view of the Joint Parliamentary Secretary to the Ministry of Agriculture, Mr. G. R. H. Nugent, M.P., who in 1954 said in a debate in the House of Commons: 'We would also recognise that in the nature of things, the fact that it is still common land and was not enclosed in the 18th century is evidence that most of it was not very good land, because, otherwise, it would have been collared with the rest.' We may assume that our ancestors were far too astute to leave good farm land unenclosed.

9. During the war it was only the outpouring of grants and subsidies that made possible the successful farming of the poorer land, and justified the ploughing up of commons, heaths, and a great deal of rough pasture. The possibility of the continued cultivation of these border line areas clearly rests either on a considerable increase in the world level of agricultural prices, or on the heavy taxation necessary to supply the subsidies. In a national emergency it may have to be a national policy to grow crops on poor land and to meet the expense of the extra outlay in labour costs or capital expenditure by subsidies or grants in aid. But it may be asked why, now that the extreme scarcity of food has passed, we should spend labour, seed and fertilisers on what is, in the main, poor land, ill adapted for cultivation, when there exists in this country so much land, occupied, indeed, by farmers, but not doing its full duty in production. Expansion of production might be largely secured through improving the productive efficiency of the fixed resources already engaged in the agricultural industry. There are, for example, great areas in the Midlands of second-rate grass which, as good men have shown, can be made productive under the plough and would be permanently improved by breaking up—improved if they were restored to grass again eventually. Agricultural experts have also outlined schemes of land reclamation on the East Anglian shores and elsewhere which would make a far better contribution to our national larder than common land which cannot be cultivated with advantage.

10. We cannot consider the use of commons without regard to their amenity value to the public. In an industrial society facilities for physical recreation are important. The 90 per cent. of the population who follow non-agricultural callings need the country. The need for country sights and sounds, the desire for occasional solitude, are, as we are coming increasingly to realise, instinctive, albeit unacknowledged needs of our being and intercourse with Nature is a condition of full and balanced living.

11. The motor car and the charabanc have annihilated distance. There are now very few inaccessible spots. London Transport appeals for custom with the advice: 'Seek the country by London Transport.' Open spaces where town-bred naturalists may learn the joys of field work are of value to the nation. Far from parting with any of the rural amenities now available to the public there is a strong case for adding to them. Our rising population increases the need for open spaces and peaceful paths.

12. The value of commons for the enjoyment of the public was stated many years ago by John Stuart Mill (Dissertations and Discussions, Vol. 2), and the principles expressed are still valid:—

‘We must needs think, also, that there is something out of joint, when so much is said of the value of refining and humanising tastes to the labouring people—when it is proposed to plant parks and lay out gardens for them, that they may enjoy more freely nature’s gift alike to rich and poor, of sun, sky, and vegetation; and along with this a counter-progress is constantly going on of stopping up paths and enclosing commons. Is not this another case of giving with one hand and taking back more largely with the other? We look with the utmost jealousy upon any further enclosure of commons. In the greater part of this island, exclusive of the mountain and moor districts there certainly is not more land remaining in a state of natural wildness than is desirable. Those who would make England resemble many parts of the Continent, where every foot of soil is hemmed in by fences and covered over with the traces of human labour, should remember that where this is done, it is done for the use and benefit, not of the rich, but of the poor; and that in the countries where there remain no commons, the rich have no parks. The common is the peasant’s park. Every argument for ploughing it up to raise more produce applies *a fortiori* to the park, which is generally far more fertile. The effect of either, when done in the manner proposed, is only to make the poor more numerous, not better off. But what ought to be said when, as so often happens, the common is taken from the poor, that the whole or great part of it may be added to the enclosed pleasure-domain of the rich? Is the miserable compensation, and though miserable not always granted, of a small scrap of land to each of the cottagers who had a goose on the common, any equivalent to the poor generally, to the lovers of nature, or to future generations, for this legalised spoliation?’

13. We are opposed to any encroachment on the rights of access which the public have acquired by long custom lasting over the centuries.

14. We are also opposed to any encroachment on the rights of commoners, which are as old as the rights of property itself. These rights should be maintained at all costs. We think it is obvious that there would be widespread and deep-seated opposition to any interference with commoners’ rights or public rights of recreation.

15. At the same time we recognise and deplore the fact that many commons are not being used efficiently. Some are so completely covered with thorn bushes, bracken and heather that they are impenetrable and of no use to agriculture or as amenities. From both points of view something should be done about these commons. If the commons were improved for grazing they would at the same time be improved for the public.

16. We accept the principle that it is a privilege for a person or groups of people to own or occupy a part of English land, and that this privilege carries with it attendant responsibilities. Commoners are no exception to this. There must be created among them a sense of responsibility so that they make use of their agricultural rights in ways that conform with something broader than a selfish interest. Speaking broadly, it is a long time since most commoners worried unduly about co-operating to keep their commons in good trim. A practical suggestion is that commoners should get together, and produce a plan for their land that would put it to the best use, bearing in mind the local circumstances. Having agreed upon the plan, and having got it approved by the necessary persons, they should take an active and responsible part in administering it.

17. As the system by which the commoners themselves are entitled to regulate their commons differs so greatly each body of commoners would have to be regarded separately.

18. In some cases it might be preferable for the Parish Council to acquire the common. In the past Parish Councils have had to administer few Acts of Parliament from which the parishioners would derive much benefit. If the Parish Council assumed responsibility for the common the parishioners might take a larger part and devote more thought to the composition of that body.

19. The County Agricultural Executive Committee could be called upon for advice and assistance, especially in bringing derelict common land into a state which would be some good to the right holders. The National Agricultural Advisory Service could also give valuable help.

20. As the law now stands the commoners, even if they wish, cannot do much to keep their land in good order, even for grazing. It should be made legally feasible for commoners to cultivate part of their common for such purposes as re-seeding and to erect a fence along roads which carry a heavy volume of motor traffic to reduce casualties of cattle and sheep.

21. There are a number of commons—poor heathland, etc.—the land of which may be described as almost sub-marginal. It cannot be put to any agricultural use and is only suitable for afforestation. In some cases the nature of the common rights is not known, in other cases there is considerable doubt whether the commons are in fact subject to common rights at all. Such land might well be afforested. Where common and public rights exist the commoners might be given rights of firewood and grazing, and also given some responsibility for seeing that the public did not abuse their privileges by damaging trees, starting fires, or other thoughtless acts.

22. Any active steps taken to prevent the thousands of acres of common land throughout the country from being wasted will be generally welcomed, so long as the historic rights of the commoners are maintained and the public interest, in so far as the commons have an amenity value, are safeguarded.

Examination of Witnesses

Mr. W. C. H. LUCKETT, J.P., Mr. A. HOLNESS, M.B.E., and Mr. D. F. HODSDON on behalf of the National Union of Agricultural Workers.

Called and Examined.

2641. *Chairman:* The Commission is very grateful to the National Union of Agricultural Workers for their memorandum and for agreeing to come today and supplement it with oral evidence. I understand that you would like to make a general statement first?—*Mr. Hodsdon:* First, may I formally present the apologies of our President, Alderman Gooch, and our General Secretary, Mr. Collison, who have both unfortunately been detained on other work, and also Mr. Martin, who was to have attended but has been prevented from doing so by a personal bereavement. I think that the last paragraph of our memorandum adequately sums up our general feelings—that active steps should be taken to prevent thousands of acres of common land from being wasted, so long as the historic rights of the commoners are maintained.

You will see from our memorandum that we have concerned ourselves chiefly with rural commons and in particular, common of pasture. We are very concerned about the amenity value of commons, but at the same time, as an agricultural interest, we are no less con-

cerned at the potential loss of agricultural production that can arise from the misuse of commons; we are thus deeply concerned both about the rights of the commoners and about the rights of the public. We feel that there is a case for the rehabilitation of, at any rate, some commons. That will necessitate, we believe, some tidying up of the law. It may need quite a deal of work on the part of the National Agricultural Advisory Service to make commons better able to carry stock and be properly grazed, and there is scope for fertilisation and possibly fencing in some cases, and for drainage. We make the suggestion that parish councils might be given more intimate duties in this connection. We also point out the need for active co-operation amongst the commoners for the proper use of common land, and we refer to the great value of afforestation in certain cases. Those are the main headings of the statement that we have already submitted to you. I have with me Mr. Holness, the retired editor of our journal, and Mr. Luckett, who is a member of our executive committee. They both have an intimate knowledge

of this subject, and we shall be happy to answer any questions which you wish to put to us.

2642. Thank you very much. I would like to ask one or two general questions first. First, are any of your members commoners?—We cannot answer that by pointing to specific members who are commoners, but there is no doubt that as the bulk of our members are in villages some of them are commoners.

2643. Have you had any special statements put to you by your members who are commoners?—No, we have not had any direct representation from individual commoners.

2644. *Mr. Evans*: Are the views you put forward those of the National Union of Agricultural Workers generally, or of commoner members only?—They are those of the National Union as a whole.

2645. How many of your members have common rights?—*Mr. Holness*: Not a great number. There may be more who make use of commons without any legal basis. Nobody today seems to be concerned to prevent them doing so.

2646. *Chairman*: Have most of your members an interest in commons as members of the public from the point of view of recreation?—*Mr. Hodsdon*: Yes. Some of them have a dual interest, both as commoners and members of the public, and some of them just as members of the public. That interest is a very strong one.

2647. Do any of your members exercise any of the common rights which are tending to fall into disuse, such as taking turf or wood?—The taking of wood, yes. I have no personal knowledge of any of our members using a right such as the taking of turf.

2648. Do they regard such rights as particularly valuable?—I think they would regard the taking of wood as a very valuable right; the taking of turf, no.

2649. *Professor Stamp*: In paragraph 2 you say:

'Decisions about the best use to which common land might be put can be based only on a complete survey . . .'

What do you mean by 'a complete survey'?—*Mr. Holness*: That paragraph was the result of our feeling that de-

tailed information about commons was lacking. I do not think we had any specific survey in mind, but we thought that a good deal more information was required before any recommendations could be made with regard to any of the land.

2650. Do you think there ought to be a complete survey on a national basis with a central register of rights, or a survey based county by county?—Neither might be necessary. A good deal of information is in the possession of the county agricultural executive committees. We did not know at the time we were preparing this memorandum that so much information was available, but we believe the committees may have made very valuable surveys of the land in their areas.

2651. They have certain lists of commons, it is true, but are not the number and identity of commoners in nearly all cases apparently completely unknown?—Yes.

2652. What do you think should be done about that?—I think something should be done to ascertain whether legal rights exist, whether there are commoners who have certain rights to commons, and so on. The information should be obtained if it is at all possible.

2653. Who do you think could obtain that information?—Presumably the Ministry of Agriculture would be the most appropriate body.

2654. *Chairman*: Have you had any specific problems with village greens?

—*Mr. Hodsdon*: No. I cannot recall any specific problem. I do not think that is strange, because if a problem were raised it would be settled locally by our local people. Unless there was something that they could not overcome it would not be referred to us.

2655. Have you met any general defects in the law as it now stands?—We have not had any representations from our local organisation on that aspect of the matter.

2656. To turn to paragraph 6, have you had much experience of the land that was requisitioned? You say there were large areas. It actually totalled about 21,000 acres.—*Mr. Holness*: No, we have not had any intimate experience of land which has been requisitioned and

cultivated, although we know about it and have seen it, of course.

2657. The interesting thing about this paragraph is that I think you are the first witnesses to complain that some of these areas have not yet been derequisitioned. I think all the other witnesses who have mentioned the point have suggested that something ought to be done to enable them to continue to be cultivated as they are. Why do you take the opposite point of view, that the 3,500 acres, should be restored to the status of ordinary common land? Is it because those 3,500 acres, which the Ministry of Agriculture told us earlier this year were then being retained for the time being, being cultivated, afford no access to the public that you raise objections?—That is right. There was also a doubt in our mind whether much of the land was suitable for cultivation and arable production. We deal with that in another paragraph.

2658. *Mr. Evans*: Do the National Union of Agricultural Workers really feel very strongly about the fact that this land has not been handed back as promised?—Representations have been made by some of our members. They have complained about the fact that land which was requisitioned during the war is apparently not to be handed back at all. This applies not only to land requisitioned for agricultural purposes, but to land taken by the War Office for military purposes. There has been a very strong feeling about that in Norfolk, and elsewhere. Many of our members feel that such land should have been handed back in accordance with promises which were made at the time in some cases.

2659. *Mr. Arnold-Baker*: Do you mean the sort of promise that might be implied in a requisition order?—I was thinking particularly of land taken for military purposes in Norfolk, where the most specific promise was given that the land would be derequisitioned and handed back after the war.

2660. Are you referring to specific promises rather than any general expectation prompted by the requisitioning procedure?—Yes.—*Mr. Hodsdon*: I would not like the commission to feel that we are simply opposed to common land which has been requisitioned continuing to be used for agricultural purposes, but we feel that due consideration should be given to the balance of the two

things—the rights of the commoners and public and the value which the land can give in the national food production drive. It may be that one outweighs the other in different ways in different circumstances.—*Mr. Luckett*: The fact that the acreage of land involved is small is an indication of the general unsuitability of common land for intensive agriculture.

2661. *Mrs. Paton*: Do you think there is any incompatibility between agricultural use and recreational use by the public?—I think there can be incompatibility, yes. Where there is an area of common land which can be well cultivated, rehabilitated to improve the stock carrying capacity or afforested, it may be necessary—if the emphasis is to be on the better use of the land for agriculture—to cut across the rights of the commoners and public; we feel however, that one cannot make a generalisation, one can only take decisions in the light of the facts of each individual case.

2662. *Professor Stamp*: Assuming that many of your members may exercise common rights, that they may turn out a few geese on the village green, and perhaps a sheep or two, would you put their interests first, as being incompatible with those of the townsman who wants to use the same common for unrestricted access?—*Mr. Holmes*: I do not think public access is hindered on a common on which geese graze. If a common is cultivated, or made into arable land, obviously common rights are extinguished and public access to that common destroyed.

2663. Is your opposition then, to arable use rather than to the improvement of pasture?—Yes.

2664. What do your members desire in regard to the improvement of pasture?—There is a general, though perhaps not very articulate opinion among our members that commons could be greatly improved. They feel that commons are very neglected, and that something should be done to make them of more use to commoners and to the public.

2665. But what, in the opinion of your Union, should be done?—The general opinion is that there could certainly be some improvement to the pasture on commons. If it were possible, say, to plough up and re-seed some of the pasture some improvement would certainly come about. Other things might

be done that do not involve ploughing: a harrow might be drawn over the grass for instance.

2666. But would there not be an immediate outcry from the public if they found their access had been reduced by any part of a common being ploughed and re-seeded?—I do not think the public would be very disturbed if a quarter say of any common were re-seeded. They would still have access to the remainder and eventually to the part re-seeded. It would probably be a better, and more valuable amenity for them eventually.

2667. *Mr. Floyd*: Have you had any representation from your members about the grazing of animals such as geese, which are very good for village greens and similar types of common, and, I think, are not worried by dogs to the same extent as are sheep and cattle? Many commons are undergrazed because farmers dare not put sheep or cattle on them for fear they may be worried by dogs, step on broken bottles, or knocked over by motor cars. Is there any general feeling among your members that they would like to keep a few geese and possibly run some poultry? Or is that practice dying out? One often hears that allotment holdings are becoming disused because the agricultural worker does not want to work his holding as much as he used to.—*Mr. Hodsdon*: I think that the older members who have exercised rights in the past are still interested in them, and those of them who can see the commercial aspect, may be interested in improving the commons so that they can make better use of them. But amongst the younger element of our membership, there just is not the interest in the exercise of grazing rights.—*Mr. Holness*: It depends to some extent on the county. In a mainly agricultural county, such as Norfolk, more people are interested in that sort of thing. In an industrial county there are more competing attractions and forms of recreation. That makes a difference to people's attitude.

2668. *Chairman*: Does the agricultural worker not keep a cow now?—*Mr. Hodsdon*: Very seldom.—*Mr. Holness*: The Milk and Dairies Regulations make it very difficult for an agricultural worker to keep one nowadays. There are rules about the cleanliness of cow sheds, and so on, and whereas years ago one could keep a cow in not very hygienic

conditions, it cannot, of course, be done now. I know of agricultural workers who kept a cow until these Regulations—which were very properly made—made it impossible for them to do so.—*Mr. Luckett*: There are not many employers nowadays who will permit their work-people to keep any kind of stock, beyond just a few chickens, but there may be a good reason for their attitude. At one time farmworkers used to keep pigs and cows.

2669. We have had evidence that it is very rare now for pigs to go rooting for mast under beeches. Is that because the agricultural labourer is now not keeping pigs either?—*Mr. Hodsdon*: I think it is rather because there is a tendency for people to keep pigs in the sty and feed them according to shed, rather than open range, practice.

2670. *Professor Stamp*: Does this mean that many of your members who have common rights of grazing are not really in a position to exercise them?—I think that is very true.

2671. Would those of your members who are commoners then prefer to sell their common rights and have something tangible in exchange? I am thinking of the village green which might be best regulated by the parish council for the purposes of sport, and is more easily regulated if there are no common rights.—Much would depend on the type of village and county. Some villages tend to follow what I might call an urban pattern, and I think that people in these villages would probably be quite willing to forgo their common rights in order to have decent sporting facilities. Conversely, in some of what I might call the rural villages there is still the feeling—and it may be right or wrong—that all the old privileges and customs should be maintained. That is why we made the point earlier that one cannot generalise on these things. There are pros and cons for suggestions of this sort which can only be settled in the light of the circumstances of the individual common.

2672. *Mr. Floyd*: Undoubtedly there are difficulties in the way of agricultural workers keeping cows—accommodation, regularity of milking, possibly attestation and the like. But do they exercise any rights they may have for smaller stock, such as goats, pigs, geese or poultry?—Common rights—or assumed com-

men rights—to run goats and geese are certainly exercised, though I would not say that there has been any pressure or representation that the holders should be able to do more. I do not know whether that lack of pressure is due to the purely economic factors of maintaining stock or whether it is because agricultural workers are coming more to regard their livelihood in the way an industrial worker does, believing that they should earn their living from their employment alone, without having to supplement it by the various methods that were adopted in the past.

2673. *Mr. Arnold-Baker*: Is the lack of pressure also due to some extent perhaps to ignorance of what rights they have?—Very likely; but even if people knew what their rights were I rather doubt whether the pressure would be as great as one might expect.—*Mr. Holness*: I think the war and the difficulty of getting rations caused many workers to give up pig keeping. They were forced to drop it and have not resumed the habit of keeping stock.

2674. *Chairman*: In paragraph 8 you quote a statement to the effect that a good deal of common land is not very good. But are there not some exceptions? Is not some common land quite good?—I do not think very much of it. I know there is a lot of difference of opinion about this, but it has always been assumed—and I think perhaps rightly so—that most common land is not of good quality. Statements have been made to that effect. During the war the ploughing of commons and waste land was advocated in the House of Commons, and I found that Mr. Tom Williams, who was then the Joint Parliamentary Secretary to the Ministry of Agriculture, replied: 'We dare not waste any of our available labour on costly reclamation schemes or on third class park or common or down land'. He said that we could not use man power for the reclamation of common land at the expense of good arable land, and if we diverted labour from land which was of greater productivity, in the end we should lose by the process. He said these common lands were of little agricultural value and would require much work to reclaim them, and added, speaking of a number of commons in Kent and Sussex: 'When I say that they are of little agricultural value, the statement is based

upon tests that have been made of the soil in every one of those areas and not merely upon one test'. Similar views were expressed by Sir Daniel Hall, who was the Chief Scientific Adviser to the Ministry of Agriculture. I was interested in looking through earlier evidence given to this Commission to see it stated that about 21,000 acres of common land thought most suitable for arable cultivation were ploughed under requisition during the war. Much of the land, it was said, was 'reasonably productive'. When it was put to a representative of the Ministry of Agriculture that that phrase did not represent a high degree of success, the reply was simply a repetition of the expression 'reasonably productive'. That was very discreet, to say the least of it, and very cautious. There was no suggestion there that common land was particularly good land. Another question was put to another representative of the Ministry. He was asked whether the Ministry would not prefer to retain more than the 3,000 acres which is in process of being purchased, and replied: 'Yes, some of them'. Perhaps I am reading more into this evidence than really is there, but to say the least of it, the Ministry representatives were not very enthusiastic about the quality of common land. And there is one other point I might make. The Ministry farmed or let to licensed farmers 21,000 acres of common land during the war and is retaining 20 commons, the 10 largest ranging from 380 acres to about 100 acres. Most of the land farmed during the war consisted of fairly large blocks, and I do not think the farming potential of common land can be fairly accurately assessed from that sample.

2675. Have you fuller details of these commons?—The Ministry has purchased, or is purchasing 20 commons; the 10 largest ones are as follows:

	acres.
Handley Common, Dorset ...	380
Turf Fen, Cambs. ...	235
Bulphan Fen, Essex ...	228
Wacton Common, Norfolk (in part) ...	190
Halkyn Mountain, Flints. (in part) ...	165
Hurstbourne Common, Hants (in part) ...	163

	acres.
Aylesbeare Common, Devon (in part)	144
Cranley Green, Suffolk ...	117
Beaford Moor, Devon (in part)	117
Downham and Westmoor Commons, Isle of Ely ...	92

2676. *Mrs. Paton*: Were these commons cultivated during the war?—Yes. These are commons which the Ministry requisitioned and proposes to retain.

2677. *Mr. Evans*: The Ministry, in their evidence, told us that were it not for the Government's policy they might wish to retain more of this 21,000 acres of common land. Does that not suggest that they have relinquished the land merely as a matter of policy rather than because it was poor agriculturally?—Yes, but it was only in the case of this 3,000 acres that the commoners were willing to surrender their rights. That is evidence of the general feeling of commoners about rights which they probably have had for a long time.

2678. *Professor Stamp*: The 21,000 acres requisitioned represent less than one per cent. of the common land of England and Wales and the 3,000 acres to be retained only about 0.15 per cent. If that is good agricultural land does its retention by the Ministry seem significant to you? Would you regard the fact that 0.15 per cent. has not been handed back as a serious matter?—Before the war 75 per cent. of the output of British agriculture came from stock or stock products—meat, milk, and so on. It is well known that cereal cultivation generally has declined since the peak period of wartime. I think there are now one million acres less arable land in England and Wales than in 1943. If good arable land is going out of cultivation and reverting to grass throughout the country it does not seem to me to be very important to retain the 3,000 acres of common land and in the process extinguish commoners' rights and destroy public access.

2679. Are you qualifying your statement in paragraph 7 'On numerous occasions we have expressed our agreement with the general principle that food should be produced to the utmost capacity of our land'?—That is a general statement. It does not mean we think it reasonable to cultivate every single acre

of land to its maximum production. It is easy to use slogans about cultivating every acre of land, and so on, but that is quite impracticable.

2680. *Professor Alun Roberts*: You suggested that putting arable land down to grass is to let it revert to the wild state, as it were. Judging by modern agronomic standards, is it not the whole rotation that is important, and is not the short grass ley a vital element in making it possible to grow cereals in the other three years?—*Mr. Hodson*: I agree that the short grass ley is important but a good deal of the land which is reverting is, in fact, reverting to permanent grass, not to short leys.

2681. I would admit that a long ley sometimes merges into permanent grass, and it is very difficult to define the two items effectively. But we cannot assume that because land goes from cereals into grass it is not the best way of maintaining the level of production. Grass is a conservation factor in the rotation and restores the fertility, which cropping has dissipated. Must we not see this in its totality?—We would accept that as a broad statement, but I think it is also true to say that grass farming, or a greater degree of grass farming, indicates a slower tempo than purely arable farming.

2682. *Chairman*: Is your point that there is only a very small quantity of land suitable for arable cultivation and it would not be worth while to abolish the rights of the commoners and public for the sake of any modest benefit which can be obtained by its arable cultivation?—I would not put it quite so simply as that. Our point is that in present circumstances the abolition of commoners' rights has to be considered much more rigorously than if current policy were simply to get the maximum production from every acre of land. At the present time there does not seem to be quite such an emphasis on production as that.

2683. But if most of your members who have common rights are not likely to be exercising them, what will they lose if their rights are taken away and the land used otherwise?—Amongst our members we have commoners, and therefore inasmuch as they would want their interests protected we have a responsibility towards them; but we also have

a responsibility as a national organisation towards the general public. The general issue has to be weighed, one point of view against the other. There can be just as great a conflict of opinion within our own organisation as among the public generally.

2684. *Professor Stamp*: Is it your members' right of access to commons that you really want to preserve, a 'right' which they do not legally possess?—Yes.

2685. Are you really arguing then not for the legal rights of your commoner members but for the non-legal privileges which they enjoy as members of the public?—Yes, to a certain extent. We must have regard, not simply to those of our members who possess rights as commoners but to our members generally, as part of the general public.

2686. I return to my previous point, then: would it not be better if all common rights were extinguished and all your members given a legal right of access to commons?—I can only repeat my previous answer, that questions like that can only be dealt with common by common.

2687. Are not your quotations about the quality of common land relevant only to the position before wartime experience? Experience since has shown that quite a reasonable proportion of common land previously thought of poor quality was in fact really good land and very productive. Is it not necessary to take advantage of recent experience?—*Mr. Holness*: I would accept that, but I suppose it is also true to say that in selecting common land for cultivation during wartime the Ministry picked out the best.

2688. You say 'We may assume that our ancestors were far too astute to leave good farm land unenclosed'. That may be true to a certain extent, but has not the position been altered by the many scientific advances since then?—Yes. My point is that the most improved methods of cultivation will not make inherently poor land good land if the foundation of a good soil formation does not exist; much more has to be done to poor land before it will be useful.

2689. I would agree with that, but is this not the sort of argument sometimes used: 'This land is so poor it has never been ploughed'. 'If it has never

been ploughed how do you know it is poor land?' 'Because it has never been ploughed'. In cases of that sort I have known abroad when the land in question was ploughed it was found to be very productive; it was simply that the opinion of it had been handed on from generation to generation until it had become a fixed idea.—*Mr. Hodsdon*: I think I would agree with what you say. One must look at each area of common land in the light of present-day knowledge. I think it is also true to say that much of the common land, even by present-day standards, is very poor stuff.—*Mr. Holness*: I would be sorry to do our ancestors an injustice.

2690. *Professor Alun Roberts*: The pressure for land was very great in the late eighteenth and early nineteenth centuries. Nevertheless reasonably good land has remained as common land, undeveloped, ever since. In seeking to explain this should we not have regard to the degree of land hunger in the locality concerned when statutory inclosure was at its height?—*Mr. Hodsdon*: Yes, that would be one factor.

2691. *Professor Stamp*: Would it be true to say that there is now no land hunger amongst your members?—It would not be right to assume that. There is a difference of approach within the Union on this. One section of the membership regards an agricultural worker's occupation as one within which they can remain and yet better themselves; while another very strong section—in the East Anglian counties in particular—seek to have their own piece of land; more attention is given in East Anglia, however, to the reclamation of land than to its rehabilitation.

2692. *Mr. Lubbock*: Does your membership include smallholders?—Yes—particularly in East Anglia.

2693. *Professor Alun Roberts*: Does the traditional nineteenth century farming ladder still epitomise the ambition of farm workers to-day, the idea of graduating to a smallholding then a bigger holding and finally a considerable farm?—Yes, with a section of the farm workers, the strength of the ambition varying according to the locality. It is particularly strong in the fen country, for instance, where a little piece of land enables them to make a better living. If they can get half an acre they can work it in their spare time;

if they can get ten acres they are able to work themselves up the ladder. In parts of the Holland District they can make quite a good living this way. The farm worker's attitude towards smallholdings is largely dependent on the area in which they live. There is a psychological factor.—*Mr. Holness*: In all counties there are a few individuals who are not happy to call any man master—sometimes they are rather aggressive individuals. They will not be satisfied until they are independent cultivators; and one reason why we feel rather strongly about the extinction of commoners' rights is because these rights are the first step on the agricultural ladder; a man who grazes a cow and a few geese on a common, has taken his first step towards becoming an independent cultivator.—*Mr. Luckett*: Yes, some workers have a really strong desire for independence, and that is why they take up smallholdings. Some do quite well, but they have to work hard.

2694. *Chairman*: Are you really putting two points of view then; one on behalf of the man who actually has common rights, but the other your general argument on behalf of the general public?—*Mr. Hodsdon*: We really put forward three points of view, that of the commoners, that of the public, and also that of agriculture and food production as a whole. It is a question of finding the balance somehow between the three.

2695. *Mr. Evans*: Is it because you consider the acreage of good agricultural land on commons to be so very small that in your opinion, this last point of view does not weigh very heavily?—We do not think that the cultivation of common land by arable farming figures very large in the general picture. At the same time there is a great deal which can be done agriculturally in the rehabilitation of grassland commons and the afforestation of others, but again the value of the land properly dealt with must be balanced against the public amenity value. One has to find the balance in each case. There is obviously much greater scope for rehabilitation than there is for actual arable farming.—*Mr. Holness*: Moreover, as we say in our memorandum, there is not much enthusiasm for the reclamation of land, some of it very good land. For instance, there are some six thousand acres of land between Whitstable and Herne

Bay; some of it has been cultivated, but there are about a thousand acres which were sold many years ago as building plots. It is now outside the area for development and can never be used for building. Even during the war a good deal of that land simply lay derelict. Now there is just an odd caravan here and there. Some of our members feel that while areas of that good, heavy land are neglected—and this is only one area of such land—there is not a very strong case for cultivating common land and thereby extinguishing commoners' rights and public access.

2696. *Professor Stamp*: Do you believe that this land, which is privately owned, should be expropriated?—The land cannot be used for building and might as well be at the bottom of the sea for all the use it is; if it were likely to be used for building we would take a very different view. I suggest if one is to be so very sympathetic towards the rights of the owners of these plots of land, one ought to be equally sympathetic to commoners' rights.

2697. *Mr. Floyd*: You mentioned afforestation. Much common land is in the hills, where seasonal work is sometimes short, and where there is a difficulty, I understand, in getting people to work owing to the lack of amenities—electricity, water supply, etc. Would forestry be welcome if it were developed on parts of hill commons and offered more regular employment to your members in the winter, bringing with it the possibility of better housing conditions and amenities, that would be welcome? Do you feel that labour is difficult to keep in these areas because of the lack of amenities and its dependence on summer employment?—*Mr. Hodsdon*: I should not have thought that any development of afforestation which provided only part-time employment would be of any assistance in retaining labour. It could possibly be so, but I do not think one could make a generalisation to that effect with any confidence. I would say that, with the exception of East Anglia where the problem is very different, there is very little seasonal unemployment in agriculture today. The vast majority of agricultural workers are employed all the year round, and therefore it is no good regarding forestry from the social point of view of finding supplementary employment for the winter. There is, how-

ever, another aspect. If any forestry were carried out in areas adjacent to land at the present time owned and worked by the Forestry Commission it would certainly improve the employment situation there. We are already experiencing in some areas, particularly Wales, some very small problems of redundancy—I do not want to magnify them—through the Forestry Commission running out of plantable land in a particular area, and therefore having to reduce the number of their staff. If forestry were carried out in adjacent areas it would ease the problem, but I would not place any great importance upon the point about seasonal employment.

2698. Much of the hill land in Central Wales is common land. Do you think that afforestation on that land would help there?—It would be of assistance from the point of view of employment.

2699. *Chairman*: I see the point of your quotation from John Stuart Mill, although I sometimes wonder whether on bank holidays the common is the peasant's park or the peasant's car park. In paragraph 13 you stress the need for the public's right of access. Do you not limit your opposition to any encroachment to cases where the public has a legal right?—*Mr. Holmes*: It is very difficult to distinguish between cases where the public's right is legal, and where it is based on custom only.

2700. In paragraph 14 you refer to widespread and deep-seated opposition to any interference with commoners' rights or public rights of recreation. Are you emphasising the public rights of recreation rather than the commoners' rights?—There is strong and very widespread opposition to any interference with rights over commons. There certainly is, for example, in Norfolk. I find it quite surprising sometimes how strongly workers who presumably have no legal rights over commons feel about the matter. They are up in arms immediately at any suggestion that any common land should be inclosed.

2701. Is that the result of long tradition?—It is probably based on memories of the seventeenth and eighteenth centuries, which seem to lie at the back of people's minds; and of course they may have heard of the fight to save Epping Forest and the battle for Berkhamsted Common. A good deal

has been written and said about the inclosure of common lands.

2702. *Mr. Arnold-Baker*: Is this the background to your objections to the non-return of requisitioned land?—Yes; there are other considerations, of course.

2703. *Chairman*: Are these recollections of eighteenth century inclosures which you say are very strong and deep-seated, handed down from generation to generation?—I think to some extent they are; but of course inclosure has been referred to in so many publications and speeches that everyone ought to know something about it.

2704. Is it a feature of the general history of the Trade Union movement?—*Mr. Luckett*: Yes it is.—*Mr. Hodsdon*: Mr. Holmes mentioned Norfolk, which is essentially a rural county with a long history and rural tradition. There even the ordinary man will know something of the history of inclosure and will feel a certain amount of resentment that land which once belonged to him has been taken away. Everybody there will do all he can to hold on to the small area of common land still left; whereas in the Midlands or the Home Counties there is practically no knowledge of this sort at all and no strong feeling about inclosure. The attitude to inclosure varies considerably from place to place.

2705. *Mr. Evans*: What are your views about lords of the manor?—*Mr. Holmes*: They do not play a very big part with much common land; sometimes it is very difficult to find who the lord of the manor is.

2706. *Chairman*: In paragraph 15 you mention the commons which are rapidly turning into thickets. What do you suggest should be done with those?—*Mr. Hodsdon*: This is a question of rehabilitation; looking at the problem dispassionately, and disregarding the rights of commoners and so on, it seems obvious that this land could be made so much better use of, both from the point of view of the public and from the point of view of the grazing, if the thickets were uprooted, the grass treated and ley cultivation, not necessarily arable farming, were carried out to make the area more usable from all points of view. We recognise that this often cannot be done because of the common rights, but at the same time it seems

obvious that in all probability both the agricultural use and public amenity would benefit from such treatment.

2707. Have you thought out how it could be done?—We are at a disadvantage here. We could, of course, by some research try to find out the legal aspects of these things and suggest an answer; but we rather felt that our document should merely put a point of view to the Commission.

2708. In paragraph 16 you say that the ownership of land carries obligations. Do you suggest that where either lords of the manor or commoners are not exercising their rights they might be expropriated without compensation?—

Mr. Holness: There is no suggestion of that.

2709. Not even where they have not been exercising their rights?—It may be they are not exercising their rights—and I gather this was brought out in the evidence given by the Ministry of Agriculture—because of the out-of-date laws and customs which govern common land. That must be taken into account.

2710. *Professor Stamp:* You say that commoners are no exception to the rule that the tenure of land carries responsibilities. The last sentence of that paragraph seems to my mind to link up with what you say in paragraph 20 further on: 'As the law now stands the commoners, even if they wish, cannot do much to keep their land in good order, even for grazing.' Would you agree that if commoners exercised their rights and grazed animals, which is their duty, the commons would be kept in good order?—I think it has been brought out before by other witnesses that it is very difficult to keep stock on some commons because of the open roads that run through or beside them and in certain parts of the country the mortality rate of stock is rather high.

2711. Could the animals not be tethered?—I suppose tethering could be resorted to in some cases; with a horse for example.

2712. On paragraph 16 have your members, who are commoners, in fact, considered only their own interests and not the general good in not exercising their rights?—*Mr. Hodsdon:* On the matter of responsibility, we take the view that the individual farmer, whether he owns the land or rents it, has a responsibility to see that it is used to the

best advantage, and in that sense we support the provisions of the Agriculture Act, 1947, intended to ensure that he does. In the same way, although we have members who are commoners and although we also have an interest in public rights over commons, we feel that there is still that responsibility to use the land properly. We would not want anyone to be exempt from that responsibility if action were to be taken which was for the general good of the public.

2713. *Chairman:* Paragraph 18 deals with the powers of parish councils. Is there any real demand for giving parish councils the powers to acquire commons? They can always have powers delegated to them by the rural district council.—*Mr. Holness:* Only recently Mr. Luckett and I were talking to a colleague from Wiltshire who was most indignant because the rural district council proposed to take over the management of the local common, which the parish council had been looking after. The parish in question is a good one, with a very active parish council and they probably wanted to manage their own common.

2714. Are there not also some very inactive parish councils?—Some parishes are much smaller than the one I have just referred to and some of them of course are very inactive. In many cases where the parish council is not a suitable body to manage a common, I would perhaps rather see it in the hands of the rural district council. It can always delegate where a good parish council exists.

2715. *Mr. Evans:* Would you agree that it is difficult in many cases to get the best results from grassland improvement unless there is adequate fencing?—*Mr. Hodsdon:* Yes, certainly. This is yet another matter where a balance has to be struck between the different interests. There obviously are areas of land which, by fencing and drainage, could be improved both from the point of view of the public and the commoner. But I believe it is also true to say that things like that could not be done without infringing some of the rights of the commoners. Therefore, somehow a balance has to be effected between the two.

2716. *Professor Stamp:* That would also relate to paragraph 20, where reference is made to cultivating part of a

common and erecting a fence. Would that not involve co-operative work amongst the commoners? Or do you mean that an individual commoner should do it?—*Mr. Holness*: I may say that fencing has been erected round one or two commons, probably quite illegally. I know a common which was open to a road on one side; the commoners erected a fence and nobody took any action about it. Stiles were put in it at appropriate places, and a gate, so that public access was not really hindered; but they did that in spite of the law. And, as I have said, nobody objected.

2717. Would you say that public access consists nowadays essentially in driving a car over a common?—In a good many cases, yes; but there are many people who use the commons who do not possess a car. There are the Youth Hostels Association, the Ramblers' Association and various other organisations of that kind. Their members are nearly all young people who have no cars.

2718. *Chairman*: I am not quite certain what you mean by the last sentence of paragraph 21: 'Where common and public rights exist the commoners might be given rights of firewood and grazing, and also given some responsibility for seeing that the public did not abuse their privileges by damaging trees, starting fires, or other thoughtless acts'. How are commoners to deal with the problem people who come in cars, light fires and leave litter?—They can certainly exercise some oversight of the common.

2719. Do you think they would be willing to do so on a bank holiday?—Some of them would. Some commoners are very keen on maintaining their rights and preventing acts of vandalism by the public.

2720. *Mr. Arnold-Baker*: Do you want commoners' committees to have power to make byelaws, for instance?—I think it would be rather more satisfactory if a common were regulated by the local authority so that money could be spent on it.

2721. *Mrs. Paton*: Do you think they might deal with the litter problem?—Yes; although I must say that in counties such as Surrey, given regular reminders, most of the people who use the commons seem very careful about gathering up their litter and taking it

away. They seem to show a reasonably high standard of behaviour.

2722. *Chairman*: One other question—would you recommend that commons or parts of commons should be used for smallholdings?—*Mr. Hodson*: No. This would be much too dangerous a use for us to advocate. The use of a common for smallholdings would mean that part would belong to one person or to a limited number of persons. This would encroach on the rights of commoners. We also feel strongly that smallholdings should be inaugurated properly, preferably with the local authority as the landlord, and be properly equipped in order to ensure that they provide a reasonable living. That could not be done on a common unless special legislation were passed to cover the whole aspect.

2723. Do you mean that an integrated scheme is needed in which commons could be included if need be?—No. We think of smallholdings in terms of Part IV of the Agriculture Act, 1947, which enables holdings to be set up which will provide a reasonable living for a man and his family. That inevitably involves either the amalgamation of small pieces of land or the division of a larger parcel of land and its equipment with buildings, and so on; and we are certainly not going to suggest that that is the right thing to be done with common land as a whole. There might conceivably be an area of common land about which the commoners did not feel particularly strongly and would be prepared to relinquish their rights, and it might be possible to develop it for smallholdings; but we certainly would not advocate that as a principle for making better use of common land generally.—*Mr. Holness*: Moreover a smallholder must have reasonably good land. If he has a very limited acreage he needs land which is good and in first-class condition in order to go in for intensive cultivation; otherwise he will not succeed.

2724. *Professor Stamp*: In view of the very great interest of your memorandum, may I ask one or two questions about the National Union of Agricultural Workers. What, roughly, is your membership?—*Mr. Hodson*: It is 150,000.

2725. What sort of proportion does that represent of the total number of agricultural workers?—It is very

difficult to estimate that. The only figure against which we can do so is that for the labour force in England and Wales, which includes a lot of people who are not potential members of ours—sons and daughters of farmers, their cousins, aunts and uncles; but we would say that somewhere between 30 and 50 per cent. of the actual employed workers are members.

2726. Do you have branches in each of the counties?—In every county in England and Wales; and although we do not have branches in every parish, we can say we cover literally every parish in England and Wales. We have 3,762 branches.

2727. In drawing up this memorandum, have you called upon the advice of your county branches in any way, or was it written entirely at headquarters?—At headquarters; although we have not made a specific enquiry of every county branch, it was drawn up by our head office in relation to the knowledge and experience that we have of the counties.

2728. I feel that Norfolk has bulked rather largely in the memorandum, and Kent too. Would it be different if you had looked at the subject from a more westerly view-point?—The obvious reason why Kent has come into the picture—and Herne Bay—is that there are two men from Kent here with me. I quoted Norfolk as being an outstanding example of a truly rural county.

My own farming experience is largely of the Midlands. The view that I have expressed is based on that experience.—*Mr. Holness*: As my colleague referred especially to men of Kent, I would like to explain that the memorandum was prepared by a committee of twelve men who are actually engaged in agriculture, drawn from all parts of the country because they are elected on a district basis; they were able to express their views and give us the benefit of their experience; I do not want you to get the idea that it was drawn up entirely by employees of the Union. It embodies the experience and opinions of those twelve men.

2729. I raised the point because in some of the western counties there are thousands upon thousands of acres of common land, and naturally the view-point there might be very different from that in the eastern counties or the Midlands.—I know the western counties—Devon, Somerset, Cornwall, Gloucester, and so on. Our membership in those areas would not disagree with this memorandum.

Chairman: We are very grateful to you for having prepared and sent us your memorandum, and for coming to discuss it with us this afternoon. You have expressed a point of view somewhat different from that of the other representatives of the agricultural industry.

(The witnesses withdrew.)

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MINUTES OF EVIDENCE

22

Thursday, 29th November, 1956

WITNESSES

The Country Landowners' Association



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COLONEL W. R. PRESCOTT, M.C., T.D., D.L.
Past President of the Association

MAJOR R. B. VERNEY
Member of the Executive Committee

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Legal Adviser

MR. D. M. WATERHOUSE
Assistant Legal Adviser

on behalf of the Country Landowners' Association

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 29th November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BARKER

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
F.L.A.S.

DR. W. G. HOSKINS, Ph.D.

MR. ALAN LUBBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence Submitted by the Country Landowners' Association

(1) The Country Landowners' Association is the National Association of owners of agricultural land in England and Wales, and is the body officially recognised and consulted by the various Government Departments on matters affecting agricultural landowning interests. Its present membership exceeds 30,000. The Association welcomes the opportunity of presenting its views on common lands to the Royal Commission.

(2) Before formulating this evidence, the Association sought the views of those of its members who are Lords of Manors and owners of common lands. As a result some 200 members owning between them over 200,000 acres of common land in England and Wales replied to an inquiry, and this memorandum is based largely on the information and opinions so obtained, which may be said to represent a good cross-section of the opinions of owners of common land generally. The Association expresses no views on commons within the Metropolitan Area of London.

(3) Common lands in England and Wales fall into two distinct categories, viz.: 'upland grazings', such as are to be found in the North of England, the Pennine Areas and in Wales; and the type more generally associated with the word 'common' which abound in lowland areas, especially in the Home Counties. Although upland grazings comprise by far the greatest acreage of common land in the country, the problems affecting common land are more acute as regards the smaller lowland commons, and for this reason, the latter are dealt with first in this memorandum.

'LOWLAND' COMMONS

(4) *General.*—The Association has included in this category all common lands in England and Wales, except 'upland grazings' and commons in the Metropolitan Area of London. Details have been received as to 50,000 acres of this type of common land from 180 landowners: 10,000 of the 50,000 acres are situated in Surrey and Sussex, and are owned by some 26 landowners. The fact that the identity of so

many commoners is unknown is one of the reasons why common rights are falling into disuse, for it is only where all the commoners are known and consent that a scheme for inclosure and improvement can be entertained by the Minister of Agriculture under the Law of Property Act, 1925.

(5) For the most part, these commons comprise scrub land suitable at present only for rough grazing, which is the type of common right most exercised. Many other common rights are known to exist over these lands besides that of grazing, e.g. those of cutting turf and gathering firewood; but these are either not exercised to any great extent or else not at all.

Reasons for Disuse

(6) (a) *Obsolescence of Common Rights.*—The reason why common rights other than those of grazing are not exercised is that they are considered by the commoners no longer worth the trouble.

(b) *Lack of Fencing.*—Where the common right is that of grazing, the commons are not used for this purpose in many cases, because they can no longer be regarded as useful grazing grounds. The idea of a 'free for all' grazing ground might have been satisfactory before the 1939-45 war, but modern farming practice, with the number of attested herds increasing, makes the old system impossible to-day for the progressive farmer. Nor is there any incentive to improve the grazing by liming, manuring or mechanical cultivations. Unenclosed common grazings are useless to the owner of an attested herd, unless the cattle of other commoners are similarly attested. Moreover, there is the increased risk to-day—which farmers are not willing to run—of stock straying off the common on to motor roads.

(c) *Decline of small-scale stock owning.*—In many cases, persons who are known to be commoners do not exercise their grazing rights because they no longer own any stock. This is particularly so with commoners who live adjoining a common and whose rights originally arose by virtue of their ownership of a cow, goat or horse. Cattle or stock ownership on this small scale is seldom found to-day.

(d) *War-time requisition of commons.*—Although rights may have been exercised over a number of these commons until the last war, the wartime requisition of common land for some non-agricultural purposes by Service Departments or other Ministries, caused the rights to fall into disuse. Since de-requisition, changed economic circumstances, coupled with lack of interest, and the other factors referred to above, have resulted in the land being neglected.

(7) *Commons and the Public.*—Although the common rights may have fallen into disuse, the land is nevertheless, in most cases, being used for some other purpose by persons who are not commoners and who have no legal rights over the land. Frequently, commons and village greens are providing recreation grounds for the public and act as 'lungs' for the inhabitants of nearby towns. But only in very few cases have the owners of those commons entered into any deed under Section 193 of the Law of Property Act, 1925, to give the public the legal right to wander at will over the commons. Six Lords of Manors of the 180 referred to above have entered into such deeds covering 850 acres. As to the rest, the public are enjoying the land for the most part without any licence or permission from the owner. Where parts of commons are being used for sport by village cricket or football clubs or, in the case of large commons, by golf clubs, there seems to be no desire to deny the benefits which at present are being enjoyed, should any change in the law make that possible. Where, however, the public are using these lands without the active consent of the commoners or the Lord of the Manor, the problem is more difficult. Considerable damage is often done to potentially good agricultural land, by the public use of it as vehicle parks, picnic sites, and other purposes. Trees have been wilfully uprooted and footpaths and tracks have been transformed into rutted motorways, by the wanton driving of vehicles over the commons. There is also a tendency on the part of Service Departments to regard common lands as ideal training grounds, often involving the use of heavy vehicles. The consent of the commoners or the Lords of Manors is not sought for this purpose, but on the other hand, the land has not been formally requisitioned. In addition, as an unfortunate corollary to

the use of any land by the general public, the litter problem has become acute, especially in beauty spots.

(8) Many Lords of Manors have stated that they do not wish entirely to exclude the public from enjoying the land, so long as their access can be kept within reasonable limits. In so far as much of the land can, and ought to be, better used for agriculture or forestry, they consider they should be allowed to appropriate a reasonable area for this purpose, leaving the rest for the public enjoyment. It cannot be over-emphasised that although the public may have used such land for air and exercise, possibly for very long periods, they have no legal right to do so, unless a deed has been entered into under Section 193 of the Law of Property Act, or the owner has otherwise given his permission.

(9) *Commoners' Schemes.*—If full agreement is reached between all the commoners and the Lord of the Manor, there should be no difficulty in obtaining Ministerial consent to the fencing and improvement of common lands. There are, indeed, a number of commons being properly used even now, because of the unanimous wish so to use them. The difficulty is, however, that in the majority of cases, only a few of the commoners are known, and therefore, it is impossible to obtain the necessary consent to the carrying out of improvement works.

(10) *Other rights over the Lands.*—In many cases the sporting over these commons is of considerable value and is often already exercised by the owner of the land or his sporting tenants, without interference with common rights. This use should be allowed to continue. Moreover, in many cases, valuable minerals lie beneath parts of these lands, the working of which could be economic were it not for the fact that any attempt to do so might infringe common rights. It is considered that the law should be altered to enable the fullest use to be made of common land in this connection, if the owner so desires.

'UPLAND GRAZINGS'

(11) *General.*—By far the greatest acreage of common land in the country comes within this category. Of the sample area of 200,000 acres of common land whose owners submitted views to the Association, over 150,000 acres comprise upland grazing land in North England, the Pennines and the Welsh mountain areas. This acreage is in the ownership of some 20 landowners and grazing rights are exercised by 900 commoners. These commons differ from the other type of common, in the following respects:—

- (a) The rights are predominantly those of grazing and attach to hill farms, the occupiers of which are commoners by virtue of that occupation. The Lord of the Manor, therefore, generally knows the identity of all the commoners.
- (b) Because the common rights attach in this way and are a necessary part of the farms, the grazing rights are exercised as fully as the law at present permits.
- (c) Because of the situation of the land, the difficulties arising from public access are not so great, the land often being remote from main roads and of no great attraction to the public.

(12) Nevertheless, the land is not being put to its most economic use for the following reasons:—

- (a) The commoners, as in the case of lowland commons, cannot erect fences and are, therefore, unable to graze attested herds. Moreover, there is an increasing danger of stock straying on to unfenced moorland roads. Full-time shepherding is necessary if sheep are not to stray. Lack of fencing also prevents any schemes for the improvement of grasslands.
- (b) Although the predominant common right is that of grazing, and all the graziers may be known, there also exist other common rights such as wood and turf cutting, in respect of which rights the commoners may not be known. Thus, although the graziers may be unanimous in wishing to fence or carry out some improvement scheme, the possibility of some unknown commoner objecting may well prevent any scheme being carried out.

(13) *Poaching of Stints*.—A further problem is that of confining the exercise of the common rights to those who are in fact true commoners. Because of the large areas of land involved, it is difficult for Lords of Manors and the true commoners to prevent 'poaching' of stints by outsiders. There is evidence that in many areas, especially in Denbigh and Flint, these commons are being over-stocked by non-commoners. Any proposed changes in the law should take account of this problem and enable proper preventive steps to be taken.

(14) Considerable areas of this type of common land could, and should, be used for some other purpose than that to which they are restricted by the common rights. For example, large tracts are suitable for afforestation, whilst other parts contain valuable minerals, the working of which is at present impossible, but which could be carried out without interference with the general use of the land for the common purpose.

Other Considerations

(15) There are certain other matters which the Association wishes to bring to the attention of the Royal Commission affecting both upland and lowland commons. These are as follows:—

(16) *De-requisition of Commons*.—During the last war, some 21,000 acres of common land were requisitioned by the Ministry of Agriculture. For these, improvements were made to the lands involving, in many cases, expensive fencing and drainage works, and large areas were put to a proper and profitable agricultural use. To-day, only comparatively few acres of common land (3,600)* remain under requisition. The rest has been de-requisitioned with the unfortunate result, from the agricultural point of view, that most of the land so improved is reverting to its former wild state. In the absence of unanimous agreement the law prevents the commoners from retaining the benefits of the war time improvements. There are certain cases where the commoners have acted in concert so as to retain the common in its improved state, e.g., the 900 acres of common land in the area of Bodmin Moor in Cornwall; but instances of such collective action are unfortunately rare. This problem causes considerable concern, especially as it is the Government's announced intention shortly to de-requisition the outstanding 3,600 acres. Unless the Government takes immediate measures to enable a majority of commoners to preserve the benefit of the improvements, this acreage will revert to its former unprofitable state.

(17) *Improvement Grants*.—Under the Hill Farming and Livestock Rearing Acts, 1946–1954, improvement grants can be obtained from the Ministry of Agriculture for the carrying out of improvements, such as the liming of the land; the regeneration of grazings; the removal of bracken, etc. However, where the land is subject to common rights, the Minister has to be satisfied that the consent of all the commoners has been obtained to the scheme, particularly where it involves any disturbance of the surface of the land. Since there are very few improvements where some disturbance will not be brought about, even temporarily, and since it is very difficult to produce evidence to show that in fact all the commoners have expressed their willingness to participate in the scheme, it is seldom that improvement grants can be obtained for common land. This is an unnecessary hardship to Lords of Manors and commoners who are anxious to improve the land. Any revision of the law which is contemplated should take account of this problem, and it is submitted that if the recommendations in paragraph (21) of this memorandum were to be adopted, the register of commoners there suggested should be sufficient evidence to show whether or not all the commoners had consented.

(18) *Compulsory Purchase*.—There are many commons which lie close to, or within, urban areas and which, because of their position, are of no great value for agriculture. On the other hand, some of them are not used to any great extent by commoners or members of the public. Lands of this nature may well provide

* Figures quoted by Earl St. Aldwyn, Joint Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food, in answer to a question in the House of Lords, 30th November, 1955. House of Lords' Official Report, Vol. 194, No. 40, Cols. 1007–1010.

admirable sites for housing or other development. The compulsory purchase of common land by local authorities involves special Parliamentary procedure, but because it has become the practice to overlook sites of this kind, valuable agricultural land has often been taken instead. The law should be amended so as to enable common land to be compulsorily acquired as easily as may land in private ownership not subject to common rights. Again, if the Association's suggestions contained in paragraph (21) of this memorandum were to be adopted, the existing procedure would be simplified, since the names of all interested persons would be known and there would be no difficulty in acquiring their interests in the normal way.

(19) *Active Commons*.—There are many cases known to the Association where commons are being properly and efficiently used by the commoners acting in concert with the Lord of the Manor. Particular mention may be made of Dorney and Lake End Commons in Buckinghamshire, of which Lt. Col. P. D. S. Palmer is the Lord of the Manor. It is understood that Colonel Palmer has submitted his own evidence to the Commission as to the management of these commons, and the Association will not give any details. Particulars of Spaunton Manor in the North Riding of Yorkshire of which Mr. Geoffrey Wardle Darley is the Lord of the Manor, and whose views are there expressed, are shown in the Appendix to this evidence. In these instances, the commoners and Lords of Manors are attempting to use the lands to the best possible advantage, the original Manorial Courts still controlling the exercise of common rights and ensuring as far as possible, that the land is not wasted. Mention might also be made of certain commons in Gloucestershire in the ownership of Mr. Jonathan Blow (Painswick Beacon, Rudge Hill, Juniper Hill and certain other commons) who has submitted his own evidence to the Commission. The existing and proposed use and management of these commons could well fall within the framework of such a scheme as is recommended in paragraph (21).

(20) *Pests*.—Where commons have been allowed to become overgrown, they have become breeding grounds for pests such as rabbits. Although existing legislation does enable such areas to be cleared by, or at the instigation of, the County Agricultural Executive Committees, the procedure is neither popular nor easy. If the law made it easy for commons to be cleared and managed effectively, there would be no occasion for any action by the Agricultural Executive Committees.

Suggestions

(21) The Association therefore makes the following suggestions:—

- (a) That the law which obstructs the improvement of common land, should be revised.
- (b) That Lords of Manors and commoners should be required, within a specified period of years of the passing of a new Act, to apply for local registration of their respective interests in any common. Reasonable safeguards should be provided for securing that rights are not lost in default of registration within the period, and that commoners who hold their rights through a Lord of Manor shall not, by default, prejudice a Lord's interests or estate. Such registration, if approved, should thereafter be the only recognised title to common rights.
- (c) That all local authorities be required to make surveys of commons within their areas, and that after the end of the registration period, they be given permissive powers to formulate schemes for their better use and regulation. For this purpose there should be included in the expression 'commons' roadside wastes where their size justifies their inclusion.
- (d) Where the common rights are already being exercised over a common, the scheme for it should, if the Lord of the Manor and 'registered' commoners agree, be directed at preserving or improving on that use if improvement is called for. Where common rights are not being exercised to a degree sufficient to justify a scheme for improvement, first consideration should be given to alternative proposals made by the Lord of the Manor and commoners, e.g., working of minerals, afforestation, etc.

- (e) No scheme should recognise the grant of public rights of access which would conflict with the proper use of the land by the holders of registered rights unless there is shown substantial justification for such grant, and if so shown, the grant should be subject to the payment of compensation for those whose registered rights and interests are depreciated or lost. Moreover, a scheme proposed primarily for the public's benefit would have to have regard to the natural amenities afforded by the land.
- (f) That before becoming operative, any such scheme should be approved by a 'Central Commons Authority' established for that purpose, such Authority also to be empowered to pay compensation out of central funds to all owners of 'registered' interests, whose rights may be depreciated or lost by any scheme. The Authority would be required, before confirming any scheme, to hear representations from any holder of a registered right, and in light of such representations to decline to confirm the scheme, or to confirm it subject to modifications.
- (g) That the schemes should be required to be formulated within such period or periods of time as may be prescribed after the coming into operation of the Act. Power should be given to the Commons Authority, or to the Minister of Housing and Local Government, to require a local authority to prepare a scheme where the Lords and commoners show a good case for one to be made, and that thereafter the 'registered' rights of the Lord of the Manor, or of the commoners, should be extinguished or included in the terms of the Scheme.
- (h) Such legislation should not be effective to deprive the Lord of the Manor of his ownership of the land.

Appendix

MANOR OF SPAUNTON

North Riding of Yorkshire

1. The name and address of the Lord of the Manor is Geoffrey Wardle Darley, Esq., Barmoor, Hutton-le-Hole, York.
2. The name and address of the Steward of the Manor is Anthony Pearce Leach of 38a, Coney Street, York.
3. The Manor of Spaunton comprises 7,553 acres.
4. The nature of the land is as follows:—

	Approximate Acreage
Grouse moor and heather	5,960
<i>Enclosed and Cultivated Lands</i>	
Whinney Hill Farm	140
Part of Appleton Common enclosed by Mrs. Procope	40
Part of Hutton Common enclosed by Mrs. Dowson	13
Miscellaneous allotments and enclosed garths	50
Remainder of grazing land on Appleton Common unenclosed	350
Unenclosed steep marginal boundary land suitable for forestry in Rosedale and Appleton	1,000
Total	7,553 acres

5. *The existing Common Rights are as follows:—*

Rights of stray and grazing for thousands of sheep and a few cattle. Regularly exercised and of great benefit to the users.

Rights of turbary. Not used much now.

Rights to take away stone gravel and bracken and whins off the waste lands for use on the Common Right Holders' own property within the Manor. Not used a great deal now.

6. The number of Common Right Holders in 1908 was 348. An up-to-date list of Common Right Holders is now in course of preparation and it is estimated that the number still exceeds 300.

7. The Common Rights are still being exercised. The main one being rights of grazing without stint.

8. It is considered that profitable use of approximately 1,000 acres on Appleton Common, and steep land in Rosedale, could be utilised for forestry. It might not be possible to obtain the consent of each individual Common Right Holder to a scheme of this sort with the Lord of the Manor.

9. The shooting and fishing rights are of considerable value.

10. There are valuable mineral rights in the form of limestone on Appleton Common. Iron-ore deposits, silica and possibly other minerals also exist on the higher parts of the Common.

General Remarks:

The Manor of Spaunton is an extensive one and it is carefully and jealously preserved by the Lord of the Manor, in conjunction with the Common Right Holders through their Court Leet. The annual Court Leet is convened by the Steward of the Manor every October and consists of the Foreman, Bailiff, 12 Jurymen and various other Court officials. At the last Court Leet in October, 1955, the Court imposed 123 fines in respect of various encroachments on the Manor such as potato garths, garages, fences etc.

Conclusion:

1. The existing Manor should be continued and preserved in its present form.

2. Greater agricultural or forestry production could be accomplished if it were possible for the Lord of the Manor to enter into a scheme of arrangement with a majority of Common Right Holders instead of with every individual Common Right Holder as the law now requires.

3. Any attempt by the Government or any statutory authority to interfere with ancient rights of the Lord of the Manor and the Common Right Holders is strongly deprecated.

Examination of Witnesses

SIR JOHN RUGGLES-BRISE, O.B.E., T.D., D.L., COLONEL W. R. PRESCOTT, M.C., T.D., D.L., MAJOR R. B. VERNY, MR. F. G. HOLLAND and MR. D. M. WATERHOUSE on behalf of the Country Landowners' Association.

Called and Examined

2730. *Chairman:* May I say first how grateful we are to the Country Landowners' Association for their very full memorandum and for appearing here this morning. In paragraph 1 you say that the membership of the Country Landowners' Association is rather more than 30,000. Can you give us any idea how much land is owned by your mem-

bers in all?—*Sir John Ruggles-Brise:* Thirteen million acres in England and Wales out of a total area of 37 million acres of land of all sorts.

2731. *Professor Stamp:* What is the qualification for membership—ownership of a certain acreage?—*Colonel Prescott:* A member is expected to be an owner of agricultural land; member-

ship is not automatic; that is to say, if someone owning his house and garden in a town applies for membership we can if we like refuse him. In that case, if we knew the facts of his ownership we should refuse him because we are an association of agricultural landowners.

2732. If someone might be a useful member can he be made one despite the fact that he owns no land?—He must own some 'agricultural land' and it depends how you define that; he might own only a large garden with perhaps a paddock or something of that kind.

2733. *Chairman*: Coming to paragraph 2, do you think the sample you took, 200 members owning 200,000 acres, was representative?—Yes. We think that it represents all types of common land and all types of lords of the manor.

2734. Even in regard to 'lowland' commons, where, as you say in paragraph 4, details were received of 50,000 acres, 10,000 of which are in two counties?—Yes. We still think that it would be representative of all types of land.

2735. That paragraph also mentions that the association has no views on Metropolitan commons. Is that because they are of no great value agriculturally?—Yes, because we consider that as an association representing agricultural landowners we should not enter into the question of Metropolitan commons.

2736. *Professor Alun Roberts*: In paragraph 3, you say '... the problems affecting common land are more acute as regards the smaller lowland commons'. Are not the difficulties in the upland commons just as troublesome, though less frequently voiced? I am thinking about such things as the abuse of stints. Should you not say 'heard more of' rather than 'more acute'?—We had in mind the difficulties arising from abuse by the public rather than from abuse by commoners or hogs commoners. The difficulties in the smaller lowland commons are much more acute as regards trespass, dogs, main roads running through them, and such things.

2737. Do you mean the problems that arise from interference from without by the public?—Exactly.

2738. Would you not also agree that much strain and stress is caused in upland regions by the abuse of stints with

the decline of manorial supervision?—Yes, we would accept that.

2739. *Chairman*: You say in paragraph 4: 'The fact that the identity of so many commoners is unknown is one of the reasons why common rights are falling into disuse, for it is only where all the commoners are known and consent that a scheme for inclosure and improvement can be entertained by the Minister of Agriculture under the Law of Property Act, 1925'. Is that quite accurate? Is it not a rather shortened way of putting it?—I think the statement is true in practice, though perhaps not in law. The Minister of Agriculture has definitely allowed it to be known that he will not entertain such schemes unless the consent of all the commoners is obtained. That is what we have always understood.

2740. On paragraph 6, sub-paragraph (b) is not the problem of attested herds merely temporary?—We would agree that it is likely to be temporary, but the problem of lack of fencing will go on. Whether herds are attested or not there will still be the difficulty of cattle straying on to roads. But perhaps we have overstressed the difficulty caused by attestation.

2741. On 6 (c), might not the small-scale stock owning increase if commons could be improved agriculturally in some way or other? Has there been a social change, or is it merely that it just is not worth while?—I do not think we should expect much increase in small-scale stock owning simply because commons are improved. There are so many other difficulties.

2742. *Professor Stamp*: What reason has the association for their statement that cattle or stock ownership on a small scale is seldom found today?—*Sir John Ruggles-Brise*: The small-scale cattle and stock owner usually seems to be a farmer who has his own small bit of land, which in practice is not common land.

2743. *Mr. Lubbock*: When you refer to persons who are known to be commoners, are you then thinking of people who are not even small farmers?—*Colonel Prescott*: Yes.

2744. People who, if they would keep a cow, have only their back garden to put it in?—Yes.

2745. *Professor Alun Roberts*: Much of the land inclosed on upland areas up to the beginning of this century carried small family units. These holdings are now being abandoned and falling into disuse. Does not the lack of the commoners there arise from the abandonment of tiny holdings?—Yes, we would agree.

2746. *Professor Stamp*: Have you any evidence of employees on the larger estates having stock of their own? It used to be quite usual, but apparently now it is quite rare.—Individually many of our members would like to see that, but one is rather discouraged by the economics of small units, and the fact that in these days the tenancy of agricultural land cannot be altered except when it falls vacant.

2747. Do you think that now that every employee on an estate is entitled to the statutory minimum wage, the old system of supplementing wages, which were then much smaller by a little stock grazing, and so on, has disappeared?—I think we would agree that there is not the same necessity now for a man to help out his wage by a little stock grazing.—*Sir John Ruggles-Brise*: May I endorse that. I have seen evidence that the employee who used to keep a pig in his back garden no longer keeps that pig, because of his raised economic status.

2748. *Chairman*: And because of his different social habits? Presumably he would rather go off to the pictures in the evening?—*Colonel Prescott*: Yes.

2749. *Mr. Arnold Baker*: If it were possible to improve and perhaps fence commons, on a co-operative basis, would you then expect small-scale stock holding to increase?—I do not think so.

2750. *Chairman*: Would the commoners continue not to exercise their rights?—I think some of them might exercise them again.

2751. *Mr. Arnold-Baker*: Would small-scale stock-holding increase even if it were possible for the commoners collectively to employ somebody to look after their animals?—I do not think I should expect very small scale stock-owning to increase under any circumstances.—*Sir John Ruggles-Brise*: I agree with that.—*Mr. Holland*: I think also there are cases where the present persons

holding common rights are no longer of the style and nature which they were formerly. The old cottage has been improved, and much enhanced in value; a new social scale has come about round the common, and the people who occupy old houses no longer have any interest in keeping cattle. I met a case the other day where a professional man owns a house which formed part of a small farm and nursery; he has common rights on Ashdown Common, which is many miles away from his house, but he has no cattle and no intention to graze or exercise those rights at all. This represents a complete change in the circumstances of the common.

2752. *Professor Alun Roberts*: Is there a general tendency in the pattern of rural housing which is indicative of a social trend; there is a tendency towards aggregating rural houses into hamlets rather than dispersing them, as the farmers would wish? Would you agree that this trend in social habits in part explains also the disuse of small holdings?—*Colonel Prescott*: Yes, I think we would accept that.—*Major Verney*: The farm worker's wife will not live two fields away from the road but must have a bus stop at her door.

2753. *Mr. Arnold-Baker*: But does not local authority housing also tend to be in clumps because it is cheaper to build that way?—Yes.

2754. *Mr. Floyd*: Do not the loc bye-laws also often discourage stock owning by forbidding anyone to keep a pig within fifty yards of a house?—*Colonel Prescott*: Yes.

2755. *Chairman*: Coming to paragraph 7, I think that this is probably an appropriate point to raise a familiar question that is, what is the value of the rights of the lord of the manor nowadays, consequent on the passing of the Law of Property Act, 1925? What is his interest now?—It varies enormously. He may, for example, be interested in the minerals under the soil.

2756. But what is left for him, since he can have no interest in coal, gold, silver, uranium or oil?—He can be interested in gravel, limestone, even zinc and tin in places, and certain other things. He might also be interested in sporting rights, which are of great value in certain areas; but I should say that

in addition to these things he has—or we hope he has—an interest in putting the land which he owns, common or otherwise, to a good agricultural purpose. In short, we expect the lord of the manor to be generally interested in his property, and though it may not be possible to value that interest it is a very real one.

2757. Is that interest a relic of a bygone age a very desirable one, but a relic of the days when the lord of the manor really looked after the manor? Or is his interest simply that of a member of the public, as a good husbandman or a *bonus pater familias*?—It is a little of all these, I think.

2758. Is this general interest very noticeable among your members?—Yes, especially of course where large commons are concerned.

2759. *Professor Stamp*: There must have been cases involving your members where the fee simple of a common has been sold or transferred to an authority such as a county council; in that case what is transferred? Does the transfer also include the title of lord of the manor?—*Mr. Holland*: I think that the title is transferred as well. Colonel Morgan's evidence to you about this was very clear, and he instanced particularly the difficulties that arise where the fee simple of a common and the title of lord of the manor are separated as has happened particularly in South Wales.

2760. We have met one or two cases where a lord of the manor, having sold to a county council, considers that all his rights and obligations have been transferred. But the county council suggests that certain obligations still rest with the erstwhile lord.—*Colonel Prescott*: We should expect all the obligations to have been transferred in cases like that. I cannot see how one can transfer rights without transferring duties at the same time.—*Sir John Ruggles-Brise*: I can endorse that. One of our members is chairman of the parish council of a village where the village green was owned and looked after by a long forgotten lord of the manor; lately the parish council have taken over all the rights, and I know that the former lord of the manor has been relieved of any responsibility at all as a result of this transaction.

2761. *Mrs. Paton*: In the documents that pass between the buyer and the seller of a lordship of the manor is there any reference at all to the fact that the title of the lord of the manor is being transferred, with all its rights and obligations?—*Colonel Prescott*: I am afraid one would have to know the individual case. I do not think we could give an answer in general terms.

2762. *Chairman*: I think Professor Stamp was speaking not of the case in which the lordship of the manor as such has been transferred but of the one in which every parcel of land in the manor has been sold by the lord of the manor, the last parcel being the common, which he had retained merely because he could not sell it to anybody else. Now he has sold that to the county council, and so he ceases to be a landowner. Has he at the same time passed the lordship of the manor to the county council?—I do not think I am qualified to answer that question, which is entirely a legal one, but we as an association would expect that the lordship had been transferred with the land, and that the two are inseparable.

2763. *Mr. Floyd*: We have met two cases where there seemed to be some doubt about it. In one case the Ecclesiastical Commissioners and in the other the National Trust had bought property, but seemed very chary of taking on the full obligations of the lord of the manor; they had become owners of the freehold, but nothing more, they thought.—Subject to legal advice, I should have said that the owner of the common was bound to assume the rights and duties of lord of the manor.

2764. *Chairman*: But suppose the lord has sold his land in separate parcels: his last sale is of the freehold of the common, so that he ceases to be a landowner at all. Is he still the lord of the manor?—I do not think I am really competent to answer that question.

2765. Paragraph 7 also refers to action taken under Section 193 of the Law of Property Act, 1925. It correctly says that there have been comparatively few cases of the powers under sub-section (2) of that Section being exercised. Why have there been so few?—I think because the average lord of the manor does not wish to give the *de jure* rights which

the Commons Preservation Society are asking for without being able to make very strict rules and regulations; he would be rather frightened of applying Section 193. I happen to be one of the few who have done it. I did it for one reason and one only, that the commons concerned are of no particular agricultural value. They are almost like roadside wastes, small narrow strips along the road; I had the consent of the commoners, who do not exercise their rights to any great extent. My object was to be able to control gypsies. I personally have great sympathy with gypsies and like to see them, but the particular gypsies who encamped on that common used to frighten the local people, particularly the old people living alone in cottages near the common, and used to steal the stakes out of the hedges. It made it easier to deal with them. I do not think I should have done it for any other reason. I do not think this provision of the Act really interests lords of the manor very much, unless they can get some other more extensive control at the same time.

2766. I was thinking particularly of commons which are in fact widely used by the public, without any legal right at all, particularly at weekends in the summer and bank holidays. Nobody has any effective control over that use, because the public cannot be kept out. Would not the section be valuable in such a case as that?—I would not expect the lord of the manor to wish to invoke it, because he would not see why he should give a legal right which at present did not exist.

2767. But would he not also be giving himself a legal right to regulate access to the common?—If he cannot do so already with legal rights he now possesses though admittedly very difficult ones to enforce because he presumably would have to prove damage or trespass, I do not think, to be frank, that he would feel that the legal rights given to him under Section 193 helped him very much.

2768. It has been suggested to us that the public's right of access should be extended compulsorily. Would you agree to that?—We should definitely oppose that. We have no objection, as we say in our memorandum, to the public acquiring rights in certain cases, subject to stringent control. We feel that public access would be dealt with better under

schemes for individual commons or groups of commons than by a blanket order. Believing very strongly in private ownership, we definitely oppose any sort of blanket order giving the public rights over commons.

2769. Could not such a scheme, or at least part of such a scheme, be made under Section 193 as it stands?—Yes, it could.

2770. Then would not any scheme merely extend the powers which in fact can now be taken under Section 193?—Yes, but it should do so by individual commons and not by a blanket order.

2771. *Professor Stamp*: Much of the evidence we have heard refers to commons which are anything from a few square yards up to perhaps five acres in extent—I am speaking here of lowland commons. It is very difficult to envisage an agricultural scheme for the management of such small units. Would you extend your objection to these small units?—No, we would not. I should like later on to go into further detail of what we had in mind with regard to registration and schemes; but if it was found in the way we suggest, that such a piece of land had no great agricultural value then I think we should expect it to be regulated, and very likely ultimately acquired by the local authority, perhaps by compulsory purchase. Provided there are proper safeguards in the way of holding an enquiry, and so on, we should not in the long run necessarily resist the principle of compulsory purchase of pieces of land which are of no great agricultural value. We should expect them to be used by the local authority for public amenity.

2772. *Mrs. Paton*: Is there more likely to be a greater necessity for such open spaces in the future than there has been in the past, because of the ever increasing number of people who are going out from towns into the country for air and exercise?—Yes, I think there will be a greater demand. On the other hand there is also a greater demand for agricultural land, because a great deal is going out of agricultural use. The two demands would have to be weighed against each other.

2773. *Chairman*: You refer also in paragraph 7, to the use of commons by

Service Departments. Are you referring to cases where those departments fail to exercise powers they possess under the Defence Acts for this purpose?—Yes. We have had some complaints.

2774. Are you not in a position to stop that use?—Yes, I think it could be stopped.

2775. *Mr. Arnold-Baker*: A large though uncertain number of village greens are probably still vested in lords of manors. Can those village greens have any value to the lords?—From a monetary point of view they would probably have no value, and this might also be true of any commoners' rights; but it would depend on the particular scheme under which the common is being used as a village green.

2776. I am thinking of the very frequent case where the lord of the manor still retains his rights in theory, but where there is in fact no scheme of any sort. Is not the only valuable right that anybody exercises over those greens in practice that of grazing?—Probably, yes.

2777. And would that not apply equally to the lord and to the commoners?—Yes.

2778. Would not the lord's rights of minerals and so on be unexercisable because they would be inconsistent with the right of recreation?—That assumes that the public have a right of recreation. I do not know how the public acquired it if there is no scheme.

2779. I am speaking now of village greens where the right of recreation has been acquired by custom. There are a very large number of them.—It is a legal point, but I do not think that we would necessarily accept that such a right would exist. I suppose that you are thinking of rights acquired by prescription, but I do not think we could agree that custom would necessarily establish a right.

2780. A customary right can be acquired by the inhabitants of a village: there are a considerable number of decided cases on this, going back to the 17th century. May not such greens present the lord with rather a tiresome problem? He still owns the soil but nothing else and cannot do anything with the green except graze a few cattle on it?—I should not have thought it was necessarily a tiresome problem. He

may have no power, but I do not see it should cause him worry.

2781. You see, I am thinking of the maintenance of these greens. Sometimes it would be a good thing if some money were spent on them; at the present moment this can be done by, for instance, the parish council, but of course only with the consent of the lord, who sometimes cannot be found.—Yes, we realise that.

2782. Has your association considered whether it might be useful in many cases to make a complete transfer of the village greens to the parish councils or other such bodies?—Yes. I will deal with that point, if I may, when we come to our proposals for the making of a scheme.

2783. *Professor Stamp*: Are not some such village greens a very lucrative source of income to members of your association because of the annual fairs which are held on them?—That may be so in a very few cases.

2784. *Chairman*: There is one point—largely a legal one—on which we have taken virtually no evidence yet. Has the question ever arisen whether the lord of the manor is the occupier of a village green or other common land in the sense that he is responsible for keeping down weeds and pests?—I do not think the point has ever been asked of the association. As you say, it is a legal matter and I am sure I am not competent to answer, but I do not think we could agree that the lord of the manor is the occupier in that sense. Custom at any rate would be against it. In the old days the lord of the manor used to divide up such duties amongst his commoners; he had no legal power to compel them to do anything, but it used to be one man's duty to cut the thistles one year and another man's to cut them the next year. That was the custom, and it seems to imply that the lord cannot be regarded as responsible for keeping down weeds. Lords of the manor who take an interest in their commons do find great difficulty in the matter, and we would like this point to be cleared up.—*Major Verney*: The Ministry of Agriculture is now giving a 100 per cent. grant for rabbit clearance on commons, which means that the Pests Officer enters the land and does the work. This implies that the Minister himself does not think that

the lord of the manor is the occupier, since under the Pests Act the occupier is responsible for destroying rabbits.

2785. I think paragraph 8 really continues on the same point as in paragraph 7; it merely emphasises that lords of the manor do not want always to exclude the public so long as their access can be kept within reasonable limits.—That is our point of view.

2786. *Professor Stamp*: On the question of public access in the two paragraphs, has your Association any strong views about the driving of motor vehicles on common land?—We certainly do not in the ordinary way like vehicles to be driven over common land. We do not wish the agricultural use of a common to be damaged in any way. I dare say there would be cases however where it would be perfectly reasonable for vehicles to be driven on to a common, but we should like that to be regularised under some scheme and we envisage that in certain cases part of the common might be laid aside for the public to drive their cars on, with a car park there. Thus they might be able to enjoy themselves on a particular part of the common which is of no particular agricultural value.

2787. Do your members not agree then that in the absence of treading by cattle genuine advantage is conferred on the quality of the grazing of the common by the pressure of the broad tyres of motor vehicles?—It would be rather difficult to agree completely. It would surely depend on weather conditions, drainage and so on. In certain cases it might be helpful, but in other cases it might do a great deal of harm.

2788. *Chairman*: In paragraph 9 where you deal with commoners' schemes, do you suggest that agreement should be reached between all the commoners and the lord of the manor?—We are referring to the present state of affairs—there is no particular difficulty at the moment if agreement is reached.

2788A. Do you want the requirement that full agreement should be reached to be retained in the future?—No.

2789. We will leave your suggestion about a majority scheme until we come to it. On paragraph 10, could you explain what changes in the law you desire in order that the fullest use may be made of common land? You mention

particularly sporting rights and minerals—is there any restriction now, anything to prevent the owner now from exercising such rights?—We particularly had in mind that the lord should be allowed to put up fencing, both temporary and in certain cases perhaps permanent. The working of minerals is controlled by planning procedure in these days.

2790. *Mr. Lubbock*: But where planning permission has been obtained, on the recommendation of the planning committee of the county council, it means merely that as far as planning goes there is no objection. It does not mean there is no objection from the commoners.—I suppose every common differs to a certain extent, but I believe that normally the lord of the manor cannot exercise his rights to the detriment of the rights of the commoners. If he were to start to win gravel all over the common, shall we say, he would probably have great trouble with the commoners.

2791. *Chairman*: Because he would take away the surface?—Yes.

2792. But do you want to change that situation?—We think that, under a scheme, if the stone or gravel is of value there is no reason why it should not be used.

2793. Even to the detriment of the commoners?—Under planning law conditions of reinstatement can be imposed, and in the long run it might not be to the detriment of the commoners, although it might be so for the time being.

2794. *Professor Stamp*: I think we have been presuming to date that the lord of the manor had the mineral rights and that he was fully entitled to work gravel. I am talking about his rights relative to the rights of the commoners.—*Mr. Holland*: We understand that he would have substantially to obtain the consent of the commoners.

2795. *Chairman*: Surely it is not so much a question of obtaining their consent, but rather that he must not do anything to the detriment of their interest; presumably if they consent then it cannot be said to be to their detriment.

—*Colonel Prescott*: That is how we understand it.

2796. But I am still not quite clear what changes in the law you suggest ought to be made for this purpose.—

There are many changes in the law we would like. Our aim is that it should be easier to make the best use of commons, preferably for agriculture, and if that is impossible then for other purposes. One of the laws which would have to be altered is that which gives a right of veto to certain people in certain cases. Another change would concern the power to fence. In short we want to have a simple means to make the best use of commons.

2797. Does all this come under the scheme procedure?—Yes.

2798. Paragraph 11, on upland grazings seems to deal almost entirely with grazing rights. Are no other common rights of great importance now?—We do not think they are of any great importance, as a general rule. From our knowledge it seems that grazing rights are almost the only ones of great value, apart of course from the lord of the manor's sporting rights in certain cases.

2799. Are not estovers still valuable in many parts of the country?—I think they are in a few places, but we have no evidence that they are of value generally. Of course the right of cutting bracken and even turf cutting is no doubt of value in certain cases.

2800. In paragraph 11, sub-paragraph (b) you say that grazing rights over the upland grazing are exercised as fully as the law at present permits. Are there not cases where there is over-grazing?—Yes, most certainly there are.

2801. Are there not cases too where there is under-grazing, even in the hills?—There would be individual cases no doubt but the general picture we obtained was that as a rule grazing rights there are exercised as fully as possible.

2802. *Sir Donald Scott*: In certain cases are upland commons over-stocked with sheep and under-grazed with cattle?—Yes, most certainly.

2803. *Mr. Floyd*: And would the present density of stocking amount to under-grazing if the commons were improved?—Yes. That brings me to the point that in making any scheme the question of stints would have to be examined.

2804. *Chairman*: Do you mean the stints would have to be increased?—

They might have to be increased in some cases, and perhaps decreased in others.

2805. Your sub-paragraph (c) conflicts with the view we have had put to us that all common land is a great attraction to the public, and that the more remote it is the better the attraction to the particular section of the public which prefers to be far 'from the madding crowd'?—We have sympathy with that evidence; we do not entirely agree with it.

2806. *Professor Stamp*: I have a general question on paragraph 12. From the point of view of agricultural use, can you see any advantage at all in the maintenance of upland commons as such, in contrast to the land being inclosed, attached to farms and used in severalty?—I think we should be bound to agree that in order to get the best use and productivity agriculturally out of that land it should be inclosed and attached to farms: but we have some sympathy with the Commons Preservation Society and the public, and we should not be prepared to ask for a measure for the general inclosure of commons. We feel that the public as a whole would thereby lose some amenity. In the last resort, we would probably not oppose inclosure in individual cases, but we should hate there to be a sort of blanket right for all upland commons to be inclosed.

2807. Provided the public were guaranteed the right of access, would it really make any difference to it whether that upland grazing remained as common or was severally owned?—I think we should be prepared to agree that it would make no difference.

2808. *Chairman*: But are there not cases where common land is used by farmers who do not farm in the immediate neighbourhood but down in the valleys, and bring their sheep up?—Yes.

2809. Would not inclosure create difficulties there?—Yes.

2810. *Mr. Lubbock*: We have heard of the importance of looking at the upland pasture in close connection with the lowland farm; might it not be that the lowland farmer who was given a limited piece of a common would not find it equivalent to the larger range that his beasts had over the common as a whole?

—*Major Verney*: It would mean that

he would have to alter his system of farming, but that would not necessarily mean that the overall agricultural production would be less.

2811. *Professor Alun Roberts*: Many people are of the opinion that some tie-up between a lowland and an upland unit—which with the facilities of modern transport can be very distant—is the best way of supporting a declining hill economy: the lowland farmer transfers beasts on to the upland grazing for the best of the summer season and releases more land to enable the lowland unit to be a production unit pure and simple. Should not that development take place on common land as well, which cannot now be used in that way because it cannot be in one man's individual holding?

—*Colonel Prescott*: We agree of course that it should be possible. I do not think our Association could be expected to press for that method of dealing with commons, but we are not prepared to oppose anything in the long run which is for the better use of the land of this country, and in certain cases I have no doubt we should agree with the method you have described.

2812. And could not this be done without restricting the scope and intensity of public use? It would mean the provision of fences and stiles, maybe, but the enjoyment of the landscape as a whole would be very little impaired.—Yes, we would agree.

2813. *Chairman*: On paragraph 13, you mention the problem of the poaching of stints. Is this very prevalent?—In certain areas I think it is. We have had a good deal of evidence about it.—*Mr. Holland*: I gather it has been fairly rampant in the Lake District and, I believe, in Wales.

2814. *Professor Alun Roberts*: Have you any evidence that stints are encroached on, and the numbers of sheep permissible from lowland farms exceeded because of the temptation of the *per capita* subsidy on hill sheep?—*Colonel Prescott*: I would agree that that may well be so, though I do not think we have actually been given evidence of it.

2815. *Chairman*: How is the problem of encroachment dealt with when it does arise?—I think it is almost impossible to deal with it at the present time. We

understand that in the past it has usually been dealt with by personal violence between the parties, but we do not encourage that!

2816. Can the beasts be impounded?—I do not think there is any satisfactory solution at present.

2817. *Professor Alun Roberts*: Has not poaching of stints become prevalent with the decline of the manorial system and the absence in consequence of any check?—Yes, that has undoubtedly aggravated the problem.

2818. *Professor Stamp*: Has your Association had any experience of the excessive use of poaching of stint rights by the lord of the manor to the detriment of the commoners?—We have no evidence of that.

2819. What does your association regard as the rights of the lord of the manor in such cases? Is he stinted?—It depends on the individual common. I think in certain cases he is.

2820. But in other cases are his rights of pasturage not defined?—They are not precisely defined, no, but he is under an obligation again not to put more stock on the common than would leave sufficient grazing for the commoners. In other words he is not allowed to push the commoners out.

2821. *Chairman*: Is it not plain then in most cases the lord of the manor has what is left, so to speak, when all the stints have been fully used?—Yes, that is what we understand to be the general rule.

2822. Therefore if the common were improved in some way or other would not the benefit go wholly to the lord of the manor?—Yes, if there were no scheme.

2823. Do you mean if there were no change in the stints?—Yes.

2824. Has a Court Leet in fact any power to fine now?—Again I do not think we are competent to answer that. We think so, but I could not give you legal chapter and verse as to how the Court Leet has acquired the right.

2825. *Dr. Hoskins*: Do they not still have the power to fine, but no means of enforcing their decisions?—*Mr. Holland*: In the appendix to our memorandum we refer to the manor of Spaunton, and it is said there in the General

Remarks that the Court Leet which sat in October, 1955, imposed 123 fines.

2826. *Chairman*: What authority have they for doing so?—I suppose it rests on the custom of the manor.

2827. Under the custom of the manor can a person who encroaches on the common be fined?—Yes.

2828. *Mrs. Paton*: Were the fines collected?—*Colonel Prescott*: We have no reason to suppose they were not. I feel sure they must have been, but I am afraid I have no definite evidence that they were. I think you can assume that it would have been mentioned if they had not been collected.

2829. *Chairman*: Was anyone appointed to collect the fines—an affearor?—Yes.

2830. At the end of paragraph 16 you say 'Unless the Government takes immediate measures to enable a majority of commoners to preserve the benefit of the improvements . . .'. How is the majority to be obtained? Is it to be a majority by number, counting the lord of the manor as one, or a majority by value and if so how valuable is the lordship of the manor?—We envisage a majority by number, with the lord of the manor counting as one, but under any scheme such as we propose he would have a right of objection. In the first instance he would have only one vote, but, along with others, would have a subsequent right of objection to the scheme so that the matter could be gone into further.

2831. *Sir Donald Scott*: Would he have the same right of objection as the commoners?—Yes.

2832. *Dr. Hoskins*: In paragraph 16, you quote a figure of 21,000 acres, which amounts as we understand it to about 1 per cent. of all the common land in England and Wales; has the Association any view as to whether more land could have been profitably requisitioned during the war? Were there other limiting factors, or does the Association think that this 1 per cent. is all that could have been turned to profitable use?—We should have said there could have been more, but it would be difficult to assess the reasons why a greater acreage was not taken over. Some war agricultural committees were more active than others, no doubt, for a variety of reasons. —*Major Verney*: And of course that 1

per cent. in area would be much more than 1 per cent. in value from the agricultural point of view.

2833. *Chairman*: And was it always for cropping in any case, that this acreage was requisitioned?—*Colonel Prescott*: Yes, I think so.

2834. I have no further questions until we come to the suggestions in paragraph 21 for alterations to the law.—I wonder whether I might make a general statement? It is some time since we submitted our memorandum, and we have given further thought to the recommendations made in it. This is what we now suggest:

First there should be registration of ownership and of claims to rights. That should be in the hands of the County Council who would, probably, we hope, delegate the actual work to District Councils. When that register has been compiled, it should be deposited officially at some convenient place, possibly the District Council's offices, and should be open to inspection and objection for a limited period. Any objections should then be heard under arrangements made by County Councils, similar to those for the footpaths survey; that is to say, it would really be a lay enquiry, supported by legal advice from the Clerk's Department of the County Council. We think that the great majority of objectors would be satisfied with a decision arrived at in that way—particularly, we should have thought, the speculative claimants, who would not think it worthwhile to go any further and expend money to try to establish a claim which was not very obvious and possibly might be bogus. We think there should be an appeal from that tribunal to a court of law. I would rather not say which court of law, because that is a matter for legal advice. I think the ordinary commoner and owner would prefer something like Quarter Sessions, because it is accessible, and usually inexpensive; but there might be a legal objection to that court and we do not have any strong view on the matter. We want a Minister, whom we wish to be the Minister of Agriculture, to have power to accept late claims, and we think that it might be left with him to decide whether there was a reasonable excuse for a claim being late.

Concurrently with registration we suggest that surveys should be made, again in the charge of County Councils, who

should be under an obligation to obtain a report from the County Agricultural Executive Committee on the state and potentiality of the commons from an agricultural point of view. Apart from this the purpose of the surveys would be merely to list and map the commons.

Now as to schemes. We suggest that in the first place they should be made by County Agricultural Executive Committees, after consultation with other interests—the lord of the manor, the commoners, and the local authority; but in order to cater for commons which are unlikely to be of much use from an agricultural point of view, in which they would probably not be interested, the County Agricultural Executive Committees should have permissive powers. The next step would be to give a right to the lord of the manor, the commoners, and also to the local authority, to produce schemes if they wish. The schemes would have to be advertised and we should expect the lord of the manor and the commoners, who by this time would have been registered, to get individual notice of them; otherwise, they would be advertised in the Press, or brought to the notice of the public by some means of that kind. There should again be a right of objection, and if any objections could not be settled amicably there should be a public enquiry under the aegis of the Minister of Agriculture. After the public enquiry it would be for the Minister to come to a decision as to whether to approve the scheme, amend or reject it.

We suggest that the Management Committee set up under a scheme should normally consist of the commoners, or an elected part of them, if there were a great number, with the lord of the manor as an *ex officio* member. We certainly would not object to what I think has been suggested in evidence before, that the County Agricultural Executive Committee should have the right to send a representative to all meetings of the Committee. The power of enforcement, if necessary, would remain with the County Agricultural Executive Committee, with possibly further powers than they now possess, though we thought that, probably, their present powers would suffice.

We envisage that sometimes a common might be divided up into different uses; part of it for forestry, part for grazing,

and part, possibly, set aside for the public.

To turn to finance we think that where the common land is used agriculturally there would be no reason for anyone, other than the commoners, to provide money; but we would expect that they could obtain the same assistance as is available now for privately-owned land-grants under the Hill Farming Acts, and so on. Where the public is given legal rights, with possibly part of the common being set aside for its use, we consider it should pay, and that that part of the common would, presumably, come under the jurisdiction of the local authority.

Where the lord of the manor could not be found, and we believe there would be such cases, we think that if the scheme was agricultural the Minister of Agriculture should exercise the rights of ownership, and after a prescribed number of years the land should be considered public property under that Minister. We have put in the period of a number of years to give the lord of the manor a chance to put in a late claim should he be abroad or not know of the scheme. Where schemes were made by a local authority, we would not oppose in the long run, as I think I said previously, the local authority taking the common over, possibly entirely, by compulsory purchase. All we should want are the normal safeguards of compulsory purchase procedure. May I just say, before I finish, that we are a little undecided about who should make the schemes. Some people feel that these schemes are a planning matter and should be left to the local authority. We do not wish to be dogmatic, but at the moment we are inclined to think, on the whole, that all control of the schemes should fall to the lot of the County Agricultural Executive Committees and the Minister of Agriculture.

2835. Is not registration probably going to be a very expensive process if it is to apply to all common land? As Professor Stamp mentioned, many commons are very small, and possibly of no great use for agriculture or anything else. Is it intended that registration should apply to all commons?—We thought it should apply to all commons. I do not think we would agree it is likely to be very expensive.

2836. Do you merely want claims to be registered, a claim which is not registered within a fixed period lapsing, subject to the power of the Minister to extend the period?—Yes, it would lapse. We want to avoid, as far as possible, heavy legal expense in justifying claims.

2837. Do you also ask for a survey of each common?—Yes.

2838. Would that not be expensive?—I should not have thought it would have been very expensive. I should have thought it could have been done by staff already available.

2839. *Mr. Lubbock*: Assuming you are thinking of having a central register, I take it you want to keep the register at as low an administrative level as possible?—Yes.

2840. *Professor Stamp*: I wonder whether your Association's proposals will greatly upset many unhappy lords of manors, who have been dormant for many generations, and are now required to make their existence known and registered. Would you have any provision for the renunciation of all rights? I can quite see it would simplify the matter enormously in the case of a number of small commons, of little or no value, if the lord of the manor could come forward and make a declaration that he had no rights.—I do not think we would have any objection to that at all.

2841. One might go a step further and say that the lord should be treated like the owner of a large country estate who hands it to the National Trust, and is required to hand over a large sum of money at the same time! But even if one did not go so far as that, would a renunciation procedure simplify things?—Yes.

2842. *Dr. Hoskins*: Quite a number of small commons would not come into the picture for at least 10 or 20 years, since if a scheme were initiated one would only expect it to be in respect of a common of some size. Need we pay any attention, really, to very small pieces of land?—I do not think we need. Perhaps I ought to have said that we have no wish to upset schemes which already exist, where they are working well.

2843. *Chairman*: In your answer to *Dr. Hoskins* have you changed your

mind about the registering of commons?—Perhaps I misunderstood him, but I thought his question related to the need for schemes. I think we should want a register.

2844. *Mr. Lubbock*: But would the register go beyond the District Council offices?—Not beyond those of a County Council.

2845. *Dr. Hoskins*: And would a survey and complete list of claims be required in the first instance?—I should have thought so. We envisage a survey and register for all commons. I thought your point was that it would not be necessary to make a scheme in every case. We do not envisage any great difficulty or expense in registration and surveying.

2846. But unless a scheme were going to be made, would it be necessary to make a survey or to go to all the trouble of compiling a register of claims?—I am not sure that we, as an Association, have a view on that specific point. I should have thought, myself, that it was desirable to have a register and survey of every common in the country.

2847. *Mrs. Paton*: Do you think it is wise to settle people's rights once and for all?—In this respect, yes.

2848. *Dr. Hoskins*: Would the survey entail a list of claims or would it be simply a geographical survey?—Merely a geographical survey, including possibly the common's potentiality from an agricultural point of view.

2849. In considering the deposition of claims, we have had before us suggestions that the time limit should be anything from 12 months to 30 years. Has the Association any view about how long should be allowed to elapse before a claim is time-barred?—We have not specifically considered that, but I think we had in mind a short period of something like 3 to 5 years.

2850. Would the Minister have power to prolong that period or would five years be the ultimate limit?—I should have thought it would be ample.

2851. *Chairman*: Would you not have to allow for persons under a disability, persons who are abroad, and so on?—I should have thought that five years would be ample for persons who were abroad.

2852. And for persons in lunatic asylums?—Yes.—*Mr. Holland*: Provision could be made for their representation through trustees.

2853. *Mr. Arnold-Baker*: What about people away on Government service for long periods?—*Colonel Prescott*: Surely, if they own land or have rights in England, they normally have somebody to look after things for them. If they have not, I do not think they would merit very much consideration.

2854. Suppose there were a diplomat serving abroad, who owned a house to which common rights were attached. He lets the house to a tenant, not for farming purposes at all, but simply as a residence. What is to be done if the tenant has no interest in the matter and cannot be bothered to defend his landlord's interest?—Does not that landlord suffer under many other Acts in such circumstances? He may be unfortunate, but all kinds of laws are passed which might affect his interests, both as owner and as tenant, and he has to cope as best he can. Though we exist to defend the rights of owners, I do not quite see why the gentleman you are talking about should expect special consideration.

2855. *Dr. Hoskins*: Apart from these exceptional cases, for which a total period of, say, five years, might be allowed for the Minister himself to act if necessary, what sort of time-limit do you envisage for the more straightforward cases? When would you think of closing the register in the first instance?—After six months, possibly; some period of that kind.

2856. You think that would be sufficient?—I think so.

2857. Would that not give rise to a danger that there would be an inordinate number of late claims, so that the period would automatically be extended to five years?—We would not object to a power to extend the period, but I should have thought it was a matter which could normally be settled in a very few months.—*Mr. Holland*: Claims under the 1947 Town and Country Planning Act originally had to be made within one year. This was further extended for another six to nine months by ministerial order.

2858. *Chairman*: Would you exclude lands vested, say, in the National Trust,

and places regulated by special Acts of Parliament, like Epping Forest?—*Colonel Prescott*: Yes. I think we would exclude those regulated by special Acts of Parliament. I do not see why bodies like the National Trust or the Church Commissioners, or anyone of that kind should be excluded. I think they should follow the normal rule.

2859. *Mr. Floyd*: We have heard of cases, such as the one at Malvern, where rights of common are said to attach to all the ratepayers in 13 parishes. Would you suggest that the Minister should have power to tidy up those cases, and say who the people with rights are? Otherwise, they would drag on for ever.—I think we should have to.

2860. The ratepayers are of course the one class of people who now have no agricultural land, since it is de-rated.—I think it would certainly be desirable to have special legislation for that sort of case.

2861. *Chairman*: I am not quite clear how the Agricultural Executive Committee comes in. It appears to come in twice.—We introduced it, first, to take part in the survey by making a report to the local authority on the agricultural potentiality of the commons. It also comes into the making of schemes.

2862. Does not that mean that, apart from the commoners and the lord of the manor, two of the interests involved will be consulted, the agricultural interest and the local authority which is also the amenity interest? What about the Forestry Commission, for example, as to afforestation? Are there not to be reports from them?—I would have thought that afforestation would be covered in the report of the Agricultural Executive Committee. It would surely be their duty, if they thought the land suitable for forestry, to get any necessary advice.

2863. Would they be competent to do that, would they even think of it?—Yes, I think so, especially if you chose to make it one of your recommendations.

2864. *Mr. Lubbock*: Would the A.E.C. report be a purely factual one on their opinion of the land's potentiality?—Yes. If the Forestry Commission felt themselves left out it would always be possible for them at the right time to object to the scheme on the ground that

the land would be more valuable for forestry.

2865. *Chairman*: Another strong interest is the Service interest. Suppose the Services thought the land would make an absolutely perfect bombing range?—I think, again, they would have to demand a local enquiry.

2866. At a later stage?—Yes.

2867. Would the report state that the land would make a good bombing range?—I hope not!

2868. *Mr. Floyd*: With regard to land which might be planted by the Forestry Commission, we have had it suggested that such land might be planted under rather special arrangements, forming a parish or local forest rather than a State forest. Would the Association think that that would be a good plan in as much as it gave local people an interest in the woods and also, possibly, provided some income for the rehabilitation of other parts of the common?—I think we would entirely agree.

2869. Where the lord of the manor has the right, under a scheme, to fell timber and take it away, ought he also to have the right to plant and carry out such protective work as is necessary?—Yes, definitely.

2870. *Chairman*: To return to the scheme itself, it is made by the Agricultural Executive Committee, in consultation with the lord of the manor and the commoners. Is there a right of veto either with the lord of the manor or with a majority of the commoners?—No. We thought that opposition by one or other of those two parties could be covered by the procedure for objecting to the scheme later on, with possibly a public enquiry.

2871. But would not the scheme have to be operated subject to the powers of enforcement of the A.E.C. by a committee of commoners?—Yes.

2872. Even if the committee represented only a minority of commoners?—Yes.

2873. Would the public enquiry be conducted on behalf of the Minister of Agriculture, Fisheries and Food?—Yes. But we do not wish to say what the qualifications of the inspector should be; we thought that some guidance on that would come out of the report of

the Committee which is now enquiring into tribunals and public enquiries.

2874. Has the Minister of Agriculture any inspectors of this kind, or would this involve a new inspectorate?—Might I suggest that your question will be answered in effect by the report of the Franks Committee. We do not wish to suggest which particular person should hold the enquiries at the moment, because we feel we shall have to fall in with what that Committee recommends.

2875. I was thinking merely that the Ministry of Housing and Local Government already has a complete inspectorate, which is accustomed to holding local enquiries. As you say, the recommendations of the Franks Committee may give the answer. Would you then rather have the Ministry of Agriculture in any case?—We would.

2876. Unless, presumably, the report of the survey is that the common is much more useful for housing purposes?—Yes.

2877. *Professor Stamp*: Has the Association had any further thoughts about who should be the Central Commons Authority?—Yes. We now feel that the Central Commons Authority, which we suggest in paragraph 21 (f) of our memorandum, should be the Minister of Agriculture.

2878. Have you thought in terms of a specific and separate authority, such as Commissioners of Common Lands?—We did consider it, but have not come down in favour of it.

2879. *Chairman*: Would the cost of the original registration and survey be met by the local authority?—Yes.

2880. But once a scheme came into operation, would the cost of working it, if it were agricultural, be met by the commoners and the lord of the manor?—Yes, according to the scheme.

2881. *Professor Stamp*: Do you think that if that feature of the arrangement were emphasised there would be a great diminution in the numbers of those claiming rights?—It would, of course, depend on the inherent value of the common.

2882. You have said in your evidence that lords of manors and commoners have obligations. One rather tends to think in terms of their rights and the

compensation which might be due to them; their obligations are, perhaps, much less emphasised. Do you now suggest schemes with very definite obligations, perhaps involving expense both for the lord of the manor and the commoners?

—Yes. I think we are ready to accept that.

2883. Might those obligations cancel out any value which the rights of the lord of the manor and of the commoners might have?—We feel that the object of any scheme should be, in the first place, to make the common of more use to the commoners. We think that they are the most important people. We do not envisage that any scheme should be purely for the benefit of agriculture, at the expense of the commoners.

2884. Any scheme is likely to improve the common, in the sense of removing brambles and other rough growth, so that it becomes more open and therefore more attractive to the town visitor. In many cases is he not likely to be the person to benefit most?—We think that will be catered for in the scheme. We are not asking for a right for the public to walk over all commons and in any case we should definitely expect a scheme to allow for temporary, if not permanent, fencing in order to exclude the public from certain areas during cultivation.

2885. Do you visualise any means whereby the general public, where access is improved, could be made to contribute towards the cost of a scheme?—Only in those cases, I think, where a particular part of the common is allotted to public use. There we think the public should take complete control and carry all the expense, but we think that in other cases their access should be so hedged in with restrictions that it could not be said they were getting any great benefit.

2886. *Mr. Floyd*: Do you not think it a little unfair to put the cost of the survey on the county council? Radnorshire, for example, half of the area of which, I believe, is common land, has only 20,000 people. At the other extreme, the City of London can probably deal with Epping Forest and its other commons without any great strain on its finances, but if all the cost were to fall on the county would you expect the poorer counties with enormous areas of hill land to be very active in conducting the

survey?—*Major Verney*: I should have thought the Exchequer Equalisation Grant would be adequate to meet this situation.

2887. *Mr. Lubbock*: Would the fact that the area was bigger make the survey any more expensive? Might it not make it less expensive?—*Colonel Prescott*: I could not venture an opinion on that. Most local government expenditure qualifies for a grant, and I think the cost would be borne fairly equitably in the long run.

2888. *Chairman*: On paragraph 18 are you suggesting the abolition of special Parliamentary procedure in relation to the compulsory purchase of common land?—Yes. We believe it should be subject to the normal procedure for compulsory purchase.

2889. Would commons be the subject of compulsory purchase only when they were to be devoted to housing, or something of that kind?—Yes. Housing would be an example.

2890. But not those still to be used for pasturing cattle?—No.

2891. Are there not many commons which are very much used by the public, but which are kept in good condition by the commoners pasturing their beasts? You do not want them to be purchased compulsorily?—No. Can I say about compulsory purchase, that, as you no doubt realise, we are an organisation which supports private ownership, and we regard compulsory purchase only as a last resort; but we would not oppose it if it is quite clear from the public enquiry that it is really essential in the public interest.

2892. Do you want compulsory purchase confined to the same cases as arise now with ordinary private land?—Yes, and we would expect any rights which are taken away to be duly compensated.

2893. *Professor Stamp*: Colonel Prescott earlier expressed a guarded sympathy with gipsies. That is a user of commons, which we have not really heard about or considered to date. Have you any evidence about gipsies?—We have, I regret to say, had some evidence of damage and difficulties caused by gipsies encamped on commons. We heard of a case recently where there is a more or less permanent encampment of gipsies

on a twenty-six acre common. These gipsies terrorise the neighbourhood, damaging fences, stealing firewood, demanding free water supplies and other services, monopolising the grazing to the exclusion of the commoners. They will not move unless compelled to do so by a strong body of police, and when they

are moved on they return again within a few days. We will, if we may, send you particulars of this case.

Chairman: Yes, we should like that. Thank you very much, gentlemen. We are most grateful to you for coming and giving us your ideas.

(The witnesses withdrew.)

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ROYAL COMMISSION ON COMMON LAND

MINUTES OF EVIDENCE

23

Thursday, 29th November, 1956

WITNESSES

The Land Agents' Society



LONDON

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THURSDAY, 29th NOVEMBER, 1956

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Secretary

on behalf of the Land Agents' Society.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

Royal Commission on Common Land

at 26, Sussex Place, London, N.W.1

Thursday, 29th November, 1956

Present:

SIR IVOR JENNINGS, K.B.E., Q.C.

Chairman

MR. C. ARNOLD-BAKER

MR. T. G. C. EVANS, O.B.E., T.D., J.P.,
F.L.A.S.

MR. C. M. FLOYD, O.B.E., F.R.I.C.S.,
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MR. ALAN LURBOCK, J.P., D.L.

MRS. F. B. PATON, J.P.

PROFESSOR ALUN ROBERTS, Ph.D.

SIR DONALD SCOTT

PROFESSOR L. DUDLEY STAMP, C.B.E.,
D.Sc., D.Lit.

MR. G. L. WILDE, *Secretary*

MR. W. T. BARKER, *Assistant Secretary*

Memorandum of Evidence Submitted by the Land Agents' Society

(Incorporated by Royal Charter)

PART I—PRESENT POSITION

1. At present a Common is often an area of land frozen in a semi-sterile condition. It cannot be enclosed and nothing constructive in the way of cultivation, planting or the winning of minerals can be carried out on the Common except under two alternatives provided by Section 194 of the Law of Property Act, 1925, namely, that the common rights can be extinguished by statute and that they may be extinguished with the consent of the County Council, which consent has to be endorsed by the Minister of Agriculture. The Society are therefore of the opinion that the present position is unsatisfactory and that it can only be remedied by legislation.

Persons Interested

2. In the main persons at present interested in common lands are

- (a) the Lord of the Manor (or freeholder),
- (b) the Commoners (who exercise a number of various rights by virtue usually of their occupation of certain lands), and
- (c) the public whose rights (if any) are normally restricted to those of taking air and exercise on the common.

3. In theory these individuals or bodies of persons are interested in every common, in practice very often some of them are difficult, if not impossible, to trace. Quite apart from the tangles of the law on the subject and the expense of its application, it is the difficulty of tracing Commoners or Lords of the Manor which, in the past, has made the formulation and execution of proposals for enclosure extremely hard. In addition it is unlikely that public opinion would have tolerated enclosure in many cases.

PART II—PROPOSALS

(A) Proposed future use of commons

4. In these days of land hunger it is only reasonable to suggest that the large area of common land which exists in this country should be put to the best use in the national interest.

5. The 'best use' may be that of agriculture (which could include that by the commoners of their existing rights), forestry, the extraction of minerals, organised sport, an unimproved open space, building development or a combination of several of them according to local circumstances at the time.

6. Admitting then that common land should be put to its 'best use' one is confronted with the questions of

- (a) Who shall decide which is that use?
- (b) Whose responsibility shall it be to see that the use is brought about?
- (c) How should the existing law be altered to implement (a) and (b)?

(B) Commons Authority

7. It is tempting to suggest that some new organisation be appointed to carry out the reorganisation and subsequent administration of commons. There are already local, national and special authorities for the regulation of public policy and the Society are reluctant to propose an increase in their number.

8. It is therefore suggested that the responsibility for commons should be placed on the Ministry of Agriculture in rural areas and in urban areas that the duties should devolve on the Ministry of Housing and Local Government. For convenience, the respective Ministries are hereinafter referred to as the 'Commons Authority'.

(C) Proposed Declaration of Commons

9. There are cases in which it is uncertain whether or not land constitutes a common within the meaning of the present inquiry. (Gated pastures in the West Riding come within this category.)

10. It is imperative that this point should be settled before the respective interests of individuals are considered.

11. The Society therefore propose that as a preliminary step the Commons Authority should declare publicly all the common lands in their area. This should be followed by an opportunity to appeal to the Courts against such Declaration; this appeal should be lodged within three months.

12. If there are no appeals within the specified period the Declaration will automatically be confirmed. Where appeals have been lodged the Commons Authority would be required to announce the confirmation or rejection of their Declaration after the result of the appeals had been made known.

(D) Proposed Registration of Rights

13. It is proposed that immediately after a Common had been Declared and before confirmation, the Commons Authority should forthwith accept registration of interests claimed in such commons, i.e. Lord of the Manor, Commoners' rights etc. This registration to be completed within twelve months from the confirmation of the Declaration.

14. After the expiration of the time limit all rights which have not been registered should be regarded as extinguished.

15. On completion of the registration period the Commons Authority should prepare a Draft Register. It should be open to the Lord of the Manor or Commons Authority to dispute any registration which has been recorded. If necessary the matter should be settled by reference to the County Court. Thereafter the Draft Register should be confirmed by the Commons Authority and the interested parties notified.

(E) Submission of Schemes for the Reorganisation and Improvement of Commons

16. The Society propose that the privilege of initiating schemes should be limited in the first instance to the Lord of the Manor (the freeholder) and afterwards to the Commons Authority.

17. The Lord of the Manor should be allowed to submit a scheme within one year from the date when the interested parties have been notified that the Register of Rights in Commons has been completed.

18. The scheme when prepared should be lodged with the Commons Authority for subsequent action.

19. If the Lord of the Manor omits to submit a scheme within one year his right to do so should terminate absolutely and it should then become the duty of the Commons Authority to prepare a scheme.

20. On the submission of a scheme by the Lord of the Manor or, in default, by the Commons Authority, an Inquiry should invariably be held to deal with objections (by means of a procedure similar to that provided for in Sections 15 and 16 of the Town and Country Planning Act, 1947) and to issue an award.

21. It is proposed that the Inquiry should be held by an Inspector to be appointed by the Minister of Agriculture, Fisheries and Food. A right of appeal should be granted from the decision of the Inspector. In view, however, of the fact that a Committee is sitting on the subject of appeals the Society does not wish to put forward proposals as to the form which the right of appeal, in the present instance, should take.

(F) Nature of Schemes

22. The essence of the problem affecting commons is that each case, being different, should be the subject of individual treatment to suit local circumstances.

23. Schemes should be directed to 'best use'.

24. A scheme might propose physical enclosure of common land for a particular purpose whilst retaining Commons status (thus keeping the right of periodic review suggested under Section J). Where however permanent works have been approved, e.g. building development, reservoirs etc., the Commons status would have to be abolished.

25. It should be open to the proposer to suggest an exchange of land where desirable.

26. Any scheme submitted by the Commons Authority may include a proposal for the compulsory acquisition of the Lord of the Manor's interest and Commoners' rights.

27. In general, it is supposed that, except in extreme cases e.g. upland grazing areas, many schemes will be of a composite nature and will include proposals for several types of land use.

28. The following are headings under which a scheme might be framed :

- (a) The person or body to be responsible for day-to-day management of the Common and for carrying out the scheme. (This could be the Lord of the Manor, an existing body or a specially created body.)
- (b) The use or uses to which the Common is to be put (which might include continuation of existing use).
- (c) The extinguishment of existing rights inconsistent with (b).
- (d) Power to make byelaws.
- (e) The exclusion of the Common from the operation of the Act for a term of years. (This might apply where a Common is being satisfactorily managed at present.)
- (f) Power to allow the Highway Authority to fence off highways.
- (g) Provision for the revision of the scheme.
- (h) Any other necessary provisions.

(G) Enforcement of Schemes

29. Where the Commons Authority is of the opinion that the Lord of the Manor has failed to carry out an approved scheme within a reasonable period they shall issue a Direction requiring him to implement that scheme. If he fails to comply with the Direction they shall be empowered to carry out the works which he has failed to do and to charge him with the cost thereof. The Lord of the Manor should be given the right of appeal (para. 21, Section E refers).

(H) Financial Implications

30. If the Lord of the Manor proposes a scheme which is subsequently approved, he would automatically assume the benefit and burden of carrying out his proposals including the payment of compensation, if necessary.

31. Similarly, if the Commons Authority proposes a scheme it will likewise assume the financial responsibility for carrying it out.

32. Consideration might be given to the Commons Authority receiving financial aid voted by Parliament in certain cases.

(I) Compulsory Acquisition

33. In this case, the Society are reluctant to suggest compulsory acquisition by either individuals or public bodies. The fact remains however, that where several individuals have rights over the same area of land, reorganisation on the lines suggested in this memorandum would often be impossible without extinguishing the rights of the Commoners.

34. It should be a *sine qua non* condition that any scheme submitted by a Lord of the Manor shall be conditional on his having first made a suitable agreement with others owning commoners' rights in the land. This might be for the continued use of land by the commoners or the extinguishment of their interest by voluntary sale.

35. Schemes submitted by Commons Authorities which include the acquisition of rights and interests of Lords of the Manor and/or Commoners should be subject to the payment of appropriate compensation which in the case of dispute should be settled by reference to the Land Tribunal.

(J) Review of Schemes

36. Where proposals made either by a Lord of the Manor or by a Commons Authority result in the continued use of some of the land as a common, the principles of such proposals should be effective for a minimum period of twelve years. After the expiration of this period it should be open to the Lord of the Manor or the Commons Authority to make fresh proposals for the future use of the land.

(K) Exemptions

37. It is considered that all commons, whether metropolitan, urban or rural, could be dealt with by legislation of the type outlined above, but it is appreciated that there may be special areas throughout the country which should be exempted from this proposal, e.g. Commons already controlled under special Acts of Parliament.

(L) Requisitioned Land

38. Immediate attention should be given to the problem of commons which have been or may be de-requisitioned and which may revert to scrub before general amending legislation on the subject of commons can become effective.

Examination of Witnesses

Mr. N. D. G. JAMES, M.C., T.D., M.A., F.R.I.C.S., F.L.A.S., Mr. G. N. BECKETT, F.R.I.C.S., F.L.A.S., Mr. H. L. KNIGHT, F.L.A.S., and Mr. R. S. BORNER, V.R.D., A.C.A. on behalf of the Land Agents' Society.

Called and Examined.

2894. *Chairman*: We are very grateful to the Land Agents' Society for presenting us with its memorandum, and for agreeing to come and give evidence orally. Would you like to make a general statement first?—*Mr. James*: Thank you. I would like to say that the Land Agents' Society has about 1,650 members. At the last census, which was before the Second World War, they were managing about 10 million acres of agricultural land. Practically all our members are agricultural members; that is to say, we have very few urban members who deal with urban property. As regards the memorandum, there was some difference of opinion in the Society as to the precise body which should be the Commons Authority. Some members thought that the Commons Authority should be the County Council and others it should be the two Ministries, of Agriculture, Fisheries and Food, and of Housing and Local Government. Our reason for deciding ultimately in favour of the two Ministries was that we thought that by having only two bodies for the whole of the country the policy would be more consistent than if each County Council had its own policy for its own county. Finally, Mr. Beckett, on my right, was the Chairman of the Sub-Committee appointed by the Society to deal with this matter.

2895. Apart from these two alternatives you have quoted in paragraph 1 cannot the owner of the soil of a common win the minerals, by virtue of the saving of mineral rights in Section 193 of the Law of Property Act, 1925?—*Mr. Beckett*: I agree.

2896. In paragraphs 7 and 8 you discuss the question of the Commons Authority. Do you really intend to distinguish between commons over which the public has a right of access, because they are entirely or partly within an urban district, and those which are entirely within a rural district over which the public normally has no right of access?—*Yes*, I think that would be a good division.

2897. *Professor Stamp*: Do not your proposals in paragraph 8 give rise to the difficulty of divided authority?—That is so.

2898. Did your Society consider the desirability, or otherwise, of creating a special Commission, a Commission of Common Land?—*Yes*. We decided against recommending it because with so many authorities already existing we did not wish to create a new one. We preferred to work within the framework of what already existed.

2899. You said that you considered giving authority to the County Council. But would there be anything incompatible between your proposal to make the Commons Authority the two Ministers, and delegation of their authority to the County Council, as the direct authority concerned?—*We assume that delegation would be necessary. It might be to the County Council, but there are others to whom we thought delegation would be equally suitable, for example, the Minister of Agriculture's Provincial Land Commissioner, who might perhaps sub-delegate to County Land Agents.*

2900. Did you not consider the desirability of going further than that, and delegating to District Councils?—*We considered it but decided not to suggest delegation to District Councils.*

2901. Does not your proposal mean that there would very likely be at least in the majority of counties, some commons coming under the Minister of Agriculture and others under the Minister of Housing and Local Government?—*That is true.*

2902. Would not that division within one county be difficult?—*We do not think that it would give rise to any special difficulties. There must be co-ordination between the Ministries at headquarters, and in the way they delegate their powers, but the fact that two commons five miles apart are being dealt with by two separate Ministries did not seem to us to give rise to any particular difficulty. The emphasis in our memo-*

random is on individual treatment. But, of course, the basic rules and principles should stem from the central authority.

2903. *Chairman*: Two or three commons situated in different manors, may, nevertheless, be contiguous. One of those commons may be partly in an urban area and another in a rural area. Would there not then be two Ministers dealing with what are virtually parts of the same common?—It would be very difficult in that case.

2904. *Mr. Arnold-Baker*: How do you distinguish between an urban and a rural area? Do you want to use the local government definition for the purpose? In other words when you speak of an urban area do you mean simply a place that is built-up, or either an urban district or a borough, as opposed to a rural district?—I think the character of the locality should determine it.

2905. You know, of course, that it is possible to change the local government status of an area, so that if the local government definition is used, responsibility for the common would have to be transferred?—Yes.

2906. *Mr. Floyd*: There is a very large urban interest in some commons in very rural surroundings. We have heard a great deal about the Lake District and other places, where the people who use the commons most are not, in fact, the local farmers but people from towns far away. In those cases, would you emphasise the air and exercise of the urban population, and put the commons under the authority of the Minister of Housing and Local Government?—I should leave the authority with the Minister of Agriculture.

2907. *Mr. Evans*: Did your members feel strongly that the responsibility should be divided in this way?—No, I do not think they did. It was not a unanimous decision.

2908. *Chairman*: On your paragraph 9, I ought to say that we have taken gated pastures to be within our terms of reference.—I understand.

2909. In paragraph 11 you suggest the Commons Authority should declare publicly all the common lands in their area. Do you mean that the Ministry of Housing and Local Government should declare what are urban commons, and the Ministry of Agriculture what are rural commons?—The survey of commons might be carried out for con-

venience sake by one Ministry only, before the division of responsibility between them.

2910. *Professor Stamp*: You talk of a 'survey', and you say that common land should be declared publicly. Will it involve a geographical survey?—I should certainly imagine it would involve a survey to identify the commons. The status of some of them as commons is in doubt.

2911. *Chairman*: You have divided the procedure into two steps—the first is to declare a piece of land to be a common, and the second is to register the rights. But is not the status of a common as such determined by the existence of common rights? Would you not have to have registration of rights at the very beginning?—I think perhaps the survey and registration could be simultaneous.

2912. Paragraphs 13 to 15 deal with the registration of claims, which are to be 'statute barred' after a certain time has elapsed. Would a claim be considered to be good unless somebody objected?—I think each claim would have to be proved. The mere fact that a claim has been made and nobody has objected should not of itself establish it. I think supporting evidence would have to be given.

2913. Would it not be extremely costly and lengthy to investigate every claim to common rights?—It certainly would involve expense. But I cannot see how the present situation can be clarified without involving expense.

2914. Had you thought of allowing claims to stand, if they were not challenged?—We had not thought of that, but I should have thought such a procedure might give rise to abuse inasmuch as people would claim in the hope that they might establish a right of some value.

2915. *Professor Stamp*: You say that the 'Commons Authority should forthwith accept registration'. If you are thinking in terms of the two Ministers, does that not mean a central register?—I should have thought that registration would have been done at provincial or county level, and not centrally.

2916. *Mr. Evans*: Does this mean that all the commons in the country would be

dealt with more or less at the same time?
—That is what we would hope.

2917. *Mr. Arnold-Baker*: Would registration cover the very small commons down to half an acre? Many commons are under 10 acres.—I think it should.

2918. *Professor Stamp*: The point recurs in paragraph 22. Do you consider that, as you state in that paragraph, there must be individual treatment for these small commons?—Yes.

2919. *Mr. Evans*: And that the process of survey and registration should go on for them as for all other commons at the same time?—Yes.

2920. *Chairman*: Would not the cost of surveying and ascertaining rights over these very small commons be fairly heavy? What advantage would the country gain?—I think that the problem needs to be dealt with once and for all. One cannot leave loose ends in the shape of commons that are excluded because they are small. I do not think size should be the determining factor as to whether they are treated as commons or not.

2921. But suppose nobody is very anxious to do anything about those commons, as is often the case. Is it worthwhile putting the country to all the expense of surveying and investigation of title?—It might give rise to a great deal of expense later on if some commons are not dealt with at the same time as the others.

2922. *Professor Stamp*: You refer to registration of interests claimed in commons—those of the lord of the manor, commoners, and so on. What would you suggest in cases where it is claimed that all ratepayers in a parish or parishes are automatically commoners?—Clearly the names of all ratepayers would be put on to the list of registered right holders.

2923. Thirteen parishes share rights on the Malvern Hills. Do you suggest that every single person in 13 parishes should be registered?—Yes.

2924. *Mr. Arnold-Baker*: When a ratepayer leaves the district, and a new person takes over his rateable hereditament, has there to be a re-registration?—I should certainly have thought that cases like that would call for periodic review as is suggested later in our memorandum.

2925. *Chairman*: In paragraph 15, you suggest an appeal, or reference, to the County Court. We have had a good deal of rather differing evidence on this. Why did you choose the County Court, rather than some other existing or new tribunal?—*Mr. Knight*: We were reluctant to suggest a new tribunal as there seemed to be plenty already. The County Court seemed as good as any other, though Quarter Sessions were also considered as a possibility.

2926. Would there be merit in directing appeals to the Agricultural Land Tribunal as has been suggested to us?—Not if the Minister of Agriculture, through his Land Commissioners, were going to be the responsible authority.

2927. Your next section, Section E, deals with the submission of schemes for the reorganisation and improvement of commons. You suggest that the privilege of initiating schemes should be limited, in the first instance, to the lord of the manor, and afterwards to the Commons Authority. Do you mean that if the lord of the manor does not submit a scheme the Commons Authority should have power to make one even without having received any application?—*Mr. Beckett*: Yes. The privilege will go first to the lord of the manor, and then to the Commons Authority. We suggest that the Commons Authority should be compelled to submit a scheme in the absence of a submission by the lord of the manor. Thus there will be a scheme in every case.

2928. Why have you given the privilege to the lord of the manor?—Because he owns the soil and his interest is the greatest.

2929. From the point of view of the land agent, is the lord of the manor's interest normally greater than that of the commoners?—Yes. For example, he can win the minerals.

2930. But are not the mineral rights worthless in many cases?—I agree they are sometimes. Our point is that the lord of the manor owns the soil, whereas the commoners, as we understand it, have the use only of the surface of the land. Therefore, it seems logical that the owner of the soil should be privileged to say what should be done with the land.

2931. But in many cases today, is not the interest of the lord of the manor

valueless? We have been told there are many commons where there are no lords of the manors—or at least they cannot be found.—That may well be so. If there is no lord of the manor and consequently no scheme is proposed by him, the responsibility would devolve on the Commons Authority.

2932. *Mr. Arnold-Baker*: Have you any real objection to the commoners submitting a scheme?—There are two difficulties about that. If there are several commoners they may not agree amongst themselves. Secondly, the commoners could only propose what was to be done on the surface of the soil. They could not, for example, suggest the working of minerals or, I would think, the growing of trees.

2933. But you say in paragraph 34: 'It should be a *sine qua non* condition that any scheme submitted by a lord of the manor shall be conditional on his having first made a suitable agreement with others owning commoners' rights in the land'. Why should the commoners be any more ready to agree with the lord than with each other?—The lord, if he proposed a scheme, would derive an advantage from it. It is unlikely though that he would be able to produce a scheme for the composite use of the common so long as there are still commoners with rights. Therefore, although we do not suggest that the lord of the manor should be given power to acquire the rights of commoners compulsorily, it is proper to suggest that he should be able to make an arrangement with them for surrender of their interests so as to enable him to implement his scheme.

2934. It is obviously very reasonable that the commoners should be consulted in this matter, but supposing the commoners agreed on the form of a scheme; why should not they be permitted to submit it themselves? Under your proposals the scheme would not become effective until it had been approved.—Presumably there would be a lord of the manor, so that they would have to come to an arrangement with him in any case.—*Mr. Knight*: The lord of the manor is, of course, in very close touch with the commoners in many cases. Very frequently the commoners are tenants of his inclosed land. Therefore he is more likely than anybody else to be able to agree with them.

2935. But supposing they agreed amongst themselves, but he did not agree with them?—Then they could represent the Commons Authority to get it to take up their scheme.—*Mr. Beckett*: It is not suggested that commoners' rights should necessarily be abolished. Under any scheme the rights of the commoners might well continue.

2936. But why do you not want the commoners to have the right to initiate a scheme?—*Mr. Knight*: We had in mind of course the difficulty in many cases of finding out who the commoners are.

2937. *Chairman*: On paragraph 21, does the inquiry by an inspector of the Minister of Agriculture apply only to rural commons? Would you not have a similar inquiry, by the Minister of Housing for an urban common?—*Mr. Beckett*: Yes.

2938. Would it not be difficult to find a lord of the manor for many urban commons who had any interest in the matter at all?—It might well be, but the fact that the lord of the manor cannot be found does not hold up the process.

2939. But would a great many of those that can be found do anything about it?—I should think the majority would not.—*Mr. Knight*: Except where there are valuable minerals, of course.

2940. *Mr. Floyd*: In paragraph 24, you suggest that certain permanent works might be necessary. It has been put to us that the commons of England and Wales are the last residue of uncommitted land we have, and that however clever the planners are today it is very difficult to foresee the future with accuracy. Do you suggest that it should be made equally easy to acquire common land for erecting buildings and reservoirs as it is for a local authority to acquire private land? Or would you suggest that it should still be rather more difficult to acquire common land for these purposes?—The operative words in our memorandum are 'best use', if a common is best used for building purposes then we are in favour of that use.

2941. Do you mean the use that is best at the present moment?—Yes. But we certainly do not think that there should be no unimproved land; some unimproved land should undoubtedly be kept for amenity.

2942. *Professor Stamp*: In paragraph 25, you say: 'It should be open to the proposer to suggest an exchange of land where desirable.' Does that mean that if a portion of land is inclosed, another piece should be added to the common in its place?—Not necessarily. That was put in more to cover the possibility of improving the shape of a common rather than as a *quid pro quo* of the sort you mention.

2943. Does it nevertheless mean making commonable land which is at present in private ownership?—It could mean that.

2944. *Chairman*: In paragraph 28 (a), you say: 'The person or body to be responsible for day-to-day management of the common'—to be specified by the scheme—'... could be the lord of the manor, an existing body, or a specially created body.' By 'existing body' are you thinking of the bodies who now manage such places as the New Forest and Epping Forest?—Not necessarily bodies of that sort. It could be the National Trust for example or some body of that sort, the Parish Council or the Rural District Council.

2945. Are you thinking then in terms of local authorities having powers to carry out schemes and manage commons?—Yes, and of existing bodies where schemes have already been agreed and are in force.

2946. But is not your actual paragraph wider than that? It says that the scheme would be framed so as to make some person or body responsible and that that body might be the lord of the manor, or an existing body, which could be a Parish Council or a Rural District Council, or a specially created body which might be a body of commoners. —*Mr. Beckett*: Yes, it could be a body of commoners or a body of trustees.

2947. *Mr. Arnold-Baker*: Or even an ancient Court Leet, which was still functioning?—Yes.

2948. *Chairman*: In paragraph 29 you refer to a power to enforce schemes. Does this assume that the duty of managing the common is vested in the lord of the manor?—Yes.

2949. Do you mean this power of enforcement to extend to other cases, where management is in the hands of a

Committee of Commoners, for example, or the National Trust?—Yes, certainly in the case where a scheme has been prepared by the Commons Authority, and the management delegated to a trust.

2950. In paragraph 28 (a) you say that the scheme would provide for a person or body to be responsible for the management of the common and for carrying out the scheme. Might the power for enforcement extend then to the lord of the manor, or an existing body, which as you said might be the Parish Council or the Rural District Council, or, presumably, the County Council, or a body of conservators specially appointed for the purpose?—That clause is primarily directed at the lord of the manor, who would have obtained approval of his scheme by making promises to do certain things; the Society thought it would be wrong for the lord of the manor having obtained approval, presumably with advantage to himself, to be able to break his promises. We thought it should be possible to take some disciplinary action.

2951. But is there to be no enforcement in the other cases, where let us say, a Committee of Commoners has the power of managing a common, or carrying out a scheme?—I am not sure about that.

2952. *Mr. Evans*: Do you not think that many lords of manors might file their petitions as a result of this? It seems to me to bear rather hardly on a lord of the manor who initiates a scheme than he should have to go through with regardless of its cost. Might not circumstances change very considerably between his initiation of the scheme and the time when it comes to be put into effect?—The proposals the lords make in their scheme they make of their own wish. They can avoid the risk altogether by not making any proposals, or they can make very modest ones. There is no reason to suppose that a scheme would necessarily be expensive to carry out. Public grants can be obtained for the clearance of scrub land, for example. The only risk might be in a near-urban area where public playing fields are being laid out.

2953. Some of the evidence we have heard has led up to suppose that considerable expense would be involved in some cases, particularly with a common where more than one interest exists.

where an agricultural interest exists alongside an amenity interest, and so on.—But substantial grants can be obtained for the improvement of agricultural land, for example. If the owner of the common does not feel that he can afford to finance an improvement then he must not suggest it.

2954. *Chairman*: Is this power of enforcement then limited to the case where the lord of the manor himself proposes a scheme?—Yes.

2955. *Professor Alun Roberts*: I find it rather difficult to see why one should put this penal sanction on the lord of the manor, unless it is there to balance the privilege of initiation which you give him in paragraph 16. In paragraph 19, if the lord fails to initiate, it becomes the duty of the Commons Authority to do so. Whereas in paragraph 29 if he does initiate, a duty is then imposed on him to implement his scheme. Why not make the initiation a duty for him? Or why not apply the same sanction to the Commons Authority as to the lord of the manor?—It is assumed in our memorandum that if the lord of the manor proposes a scheme, he expects to derive an advantage from it, of one sort or another. But if no advantage is to be obtained, somebody has to assume responsibility and it is therefore suggested in our memorandum that it should be the Commons Authority.

2956. *Chairman*: As I understand it, you want the lord of the manor to have power to prepare a scheme if he wishes to do so; but you want something done to the common even if the lord of the manor does not?—Yes.

2957. *Mr. Arnold-Baker*: Would you expect a lord of a manor who was preparing a scheme, to deposit a sum of money as security for his ability to carry it out?—No, I do not think so.

2958. If he fell into financial difficulties after submitting the scheme, do you propose that the work should be done by somebody else, but at his expense?—Yes.

2959. Suppose he had no money?—Then the public authority who did the work would have to pay for it.

2960. *Chairman*: In the section on the financial implications, particularly in paragraph 32, you suggest grants should be made in certain cases out of money voted by Parliament; can you enlarge

on that?—These would only have a very limited application, I think. We do not visualize that grants would be necessary for the improvement of agricultural land, for example, in addition to those that are already in being, which, provided they can be made applicable to commons, should be sufficient. I doubt whether they are applicable to commons at the moment. The suggestion is principally intended to cover such operations as levelling land for playing fields. It might also have a wide application to upland pastures where the cost of improvement exceeded the grants that were available.

2961. Had you intended grants to be made for the more or less urbanised common or one which was very largely used by the public where, according to much of the evidence we have had, the cost of maintaining the common as what is virtually a public open space is very considerable?—We are suggesting a grant for creating the desirable conditions, not for maintaining them afterwards.

2962. Are these capital grants then?—Yes.

2963. In paragraph 33; is your intention to enable the lord of the manor himself to extinguish the common rights and so divide the land into severalty—in other words a form of inclosure?—It is suggested that the lord of the manor should be able to extinguish the common rights by agreement.

2964. Does paragraph 34 then refer only to a scheme in which compulsory acquisition is proposed under paragraph 33 and not, as we had thought just now, to all schemes?—*Mr. Knight*: It was not intended to give the lord of the manor compulsory purchase rights, if that is what you were suggesting.

2965. You say:

‘... the Society are reluctant to suggest compulsory acquisition by either individuals or public bodies. The fact remains however, that where several individuals have rights over the same area of land, reorganisation on the lines suggested in this memorandum would often be impossible without extinguishing the rights of the commoners.’

Does that not mean that the common could be acquired compulsorily either by

an individual—who would presumably be the lord of the manor—or by a public body?—We were thinking more of the acquisition of rights by a public body where capital works such as those we mention in 24, building and the like, are concerned.

2966. You are not suggesting a disguised form of inclosure then?—No, there is no suggestion of that.

2967. In paragraph 36 you suggest a review of schemes. What is the purpose of having a review?—*Mr. Beckett*: Because conditions change; for example, land that was allocated for agricultural use might become more suitable for playing fields. We thought that a scheme should be fluid to a certain extent and that the most convenient way would be to provide for reviews from time to time.

2968. Why not have the reviews only when somebody thought there ought to be a change?—There is always the danger that there might always be somebody who thought there ought to be a change and things might never settle down.

2969. Why have you suggested a period of twelve years? We have had the suggestion of periodic reviews before but I think it was always for smaller periods, perhaps five years.—I would have thought five years was too short a period inasmuch as it would hardly be worth while preparing land for agricultural use, for example, for that length of time. By the time the scheme was

working nicely the use might be changed. We put twelve years as a middle figure; many of us thought fifteen more appropriate.

2970. Would not the use be changed by the lord of the manor if he submitted a scheme which was approved?—Yes, by the Commons Authority. Our idea is that anybody should be able to require a review at the end of the cycle.

2971. Could the local authority then say they wanted the land for housing?—That would be possible.

2972. *Mr. Floyd*: In paragraph 28 (f) you talk of giving power to the highway authority to fence roads. Where roads cross commons—and this is a circumstance we have found very frequently—and it is obviously desirable to prevent stock straying on to them, do you suggest it should be obligatory on the highway authority to fence their roads, or should it be for the body managing the common to fence their stock off the highway?—I think those who use the land should bear the expense of fencing it.—*Mr. Knight*: That problem comes up very frequently in Wales in particular. We hoped it would be dealt with to some extent by the provision of grids rather than by fencing. That is already being done in many cases with, of course, the highway authority bearing the cost.

Chairman: Thank you very much for the memorandum and for coming along to give evidence.

(The witnesses withdrew.)